CLE by the SEA 2023

Family Law Track

Alphabet Soup - The Initials that Rule Our Cases, from COBI to PT to SM (with Ethics for good measure!)

July 10-12, 2023

8:15 AM - 12:30 PM

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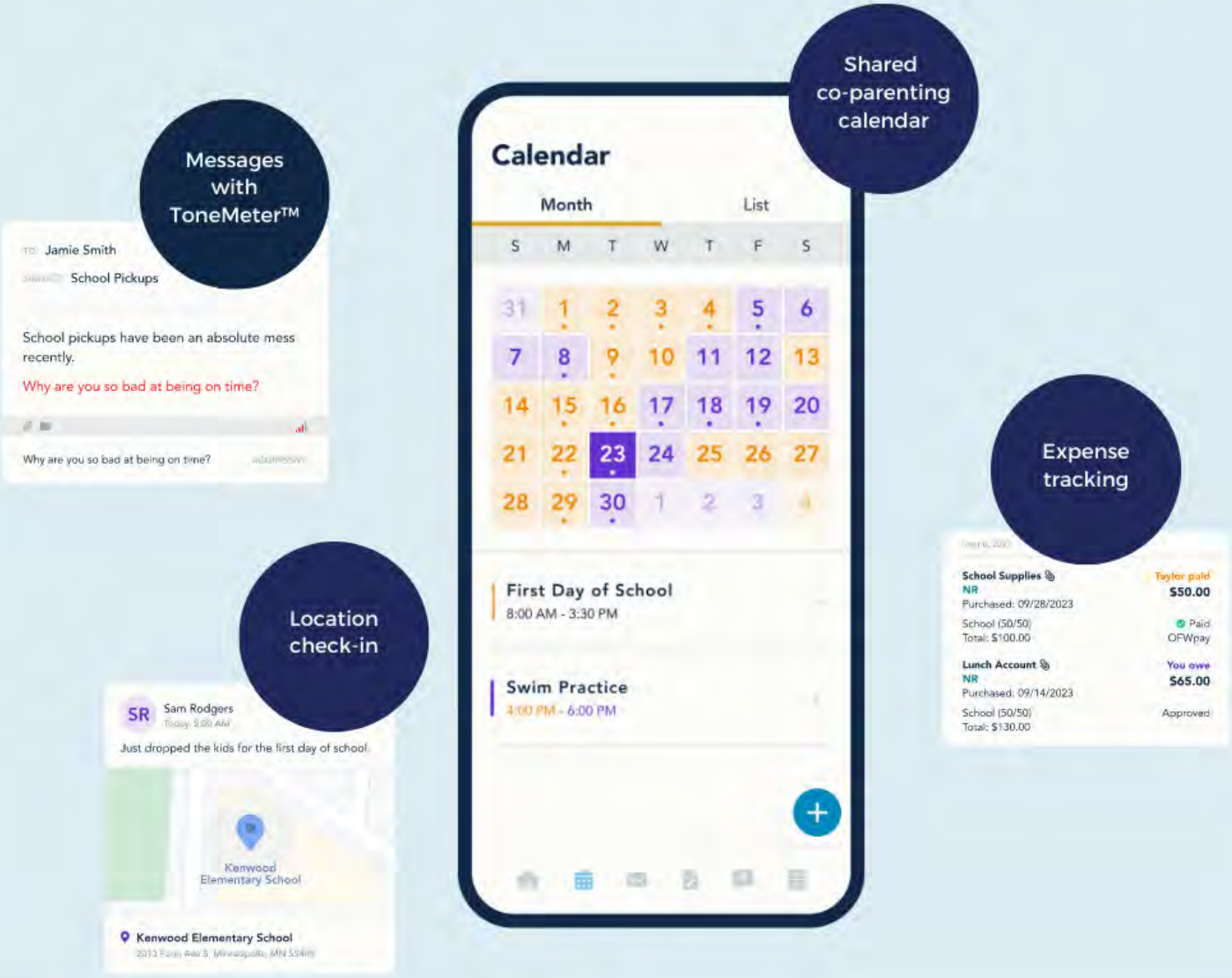

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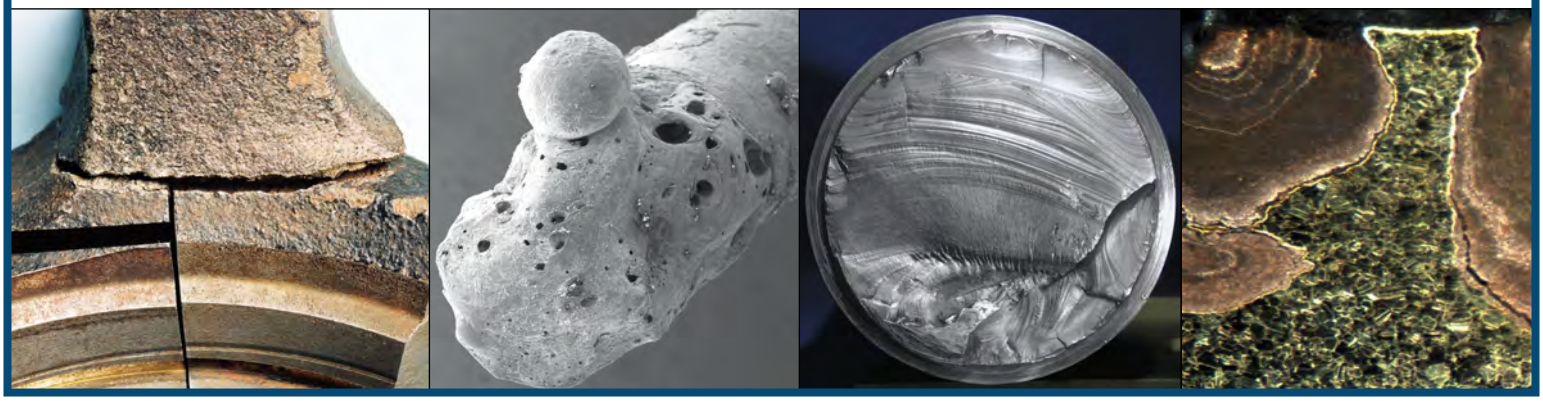

CLE by the Sea
Family Law Track
July 10 – 12, 2023

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(with Ethics for good measure!)

Daily Agendas

Monday, July 10, 2023

8:15am Introduction
Gloria Cales, *Gloria L. Cales PC*
David Horowitz, *Warner Angle Hallam Jackson & Formanek PLC*

8:20 am Discuss Changes in Orders of Protections
Carrie Cravatta, *Duenas Eden Cravatta PLC*

Panel: Honorable Suzanne Cohen, *Maricopa County Superior Court*
Honorable Patricia Green, *Pima County Superior Court*
Amy Duenas, *Duenas Eden Cravatta PLC*
Dori Eden, *Duenas Eden Cravatta PLC*

9:20am Family Law and Criminal Intersection
Honorable Suzanne Cohen, *Maricopa County Superior Court*

Panel: Honorable Patricia Green, *Pima County Superior Court*
Carrie Cravatta, *Duenas Eden Cravatta PLC*
Amy Duenas, *Duenas Eden Cravatta PLC*
Dori Eden, *Duenas Eden Cravatta PLC*

10:20am Break

10:35 am Substance Abuse and Mental Health Issues Impact Parenting Time
Dori Eden, *Duenas Eden Cravatta PLC*

Panel: Honorable Suzanne Cohen, *Maricopa County Superior Court*
Honorable Patricia Green, *Pima County Superior Court*
Carrie Cravatta, *Duenas Eden Cravatta PLC*
Amy Duenas, *Duenas Eden Cravatta PLC*

11:35 am The Intersection of Family and Juvenile Law
Amy Duenas, *Duenas Eden Cravatta PLC*

Panel: Honorable Suzanne Cohen, *Maricopa County Superior Court*
Honorable Patricia Green, *Pima County Superior Court*
Carrie Cravatta, *Duenas Eden Cravatta PLC*
Dori Eden, *Duenas Eden Cravatta PLC*

12:30 pm Adjourn

Tuesday, July 11

8:15 am Ethics for Family Lawyers
Lynda Shely, *The Shely Firm PC*

9:15 am Spousal Maintenance Guidelines
Honorable Michael Herrod, *Maricopa County Superior Court*
David Horowitz, *Warner Angle Hallam Jackson & Formanek*

10:15 Break

10:30 Spousal Maintenance Guidelines (cont.)

11:30 Judicial Panel
Honorable Patricia Green, *Pima County Superior Court*
Honorable Michael Herrod, *Maricopa County Superior Court*
David Horowitz, *Warner Angle Hallam Jackson & Formanek*

12:30 Adjourn

Wednesday, July 12

8:15 am Introduction
Gloria Cales, *Gloria L Cales PC*

8:20 am Ins & Outs of Appeals
Erica Leavitt, Esq., *Schmillen Law Firm*
Kristi Reardon, *Berkshire Law Office PLLC*

10:00 Break

10:15 Legislative Update
Erica Leavitt, Esq., *Schmillen Law Firm*
Kristi Reardon, *Berkshire Law Office PLLC*

11:30 Case Law Update
Erica Leavitt, Esq., *Schmillen Law Firm*
Kristi Reardon, *Berkshire Law Office PLLC*

12:30 Adjourn

2023 CLE by the Sea: Family Law Track
July 10-12, 2023
Faculty Biographies

HON. SUZANNE COHEN was appointed to the Bench in December 2012 and took office January 2013 joining the Family Department. Judge Cohen became the Presiding Judge of the Family Department in November 2016. Judge Cohen rotated to the criminal department in June 2019. Judge Cohen is currently the Associate Criminal Presiding Judge.

Prior to being appointed, Judge Cohen was a prosecutor with the Maricopa County Attorney's office and with the Riverside County District Attorney's Office. Since being appointed, Judge Cohen has presented for the Judicial Conference, The Arizona State Bar, The Maricopa County Bar and American Academy of Matrimonial Lawyers, on various family law topics.

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.

CARRIE P. CRAVATTA is an attorney who represents clients in family law matters in Arizona. She is compassionate, caring, honest and respectful family law attorney.

She grew up in a small town in Illinois, but gravitated towards the "big city" after high school for both college and law school. She attended North Central College in Naperville, Illinois and The John Marshall Law School in Chicago, Illinois. Carrie is licensed in both Illinois and Arizona.

Carrie Cravatta has been recognized by peers and was selected to Super Lawyers for 2021, 2022 and 2023. Prior to that she was recognized as a Rising Star by Super Lawyers (2016-2018). This selection is based off of an evaluation of 12 indicators including peer recognition and professional achievement in legal practice. Being selected to Super Lawyers is limited to a small number of attorneys in each state. As one of the few attorneys to garner the distinction of Super Lawyers, Carrie Cravatta has earned the respect of peers as one of the top-rated attorneys in the nation.

She has also been recognized in Phoenix Magazine as a Top Lawyer and as one of the "10 Best" Attorneys by the American institute of Family Law and National Academy of Family Law Attorneys. She has presented at several seminars on topics such as Advanced Child and Spousal Support Issues and grandparent visitation, as well as volunteered at the Arizona State University Sandra Day O'Connor College of Law Practice Area Career Fair. Carrie also finds time to volunteer at FLAP often and was recognized for her contributions to FLAP by CLS and by the State Bar of Arizona in 2015.

AMY DUENAS has focused her twenty-year law career on Family Law. Prior to joining forces with Dorian Eden to create Duenas Eden (now Duenas Eden Cravatta) she worked at several firms in their Family Law departments. She has also expanded her area of practice to Juvenile matters, specifically adoptions and dependencies. She has extensive trial experience in the State of Arizona and has worked on several Court of Appeals cases involving Family Law issues. Phoenix Magazine recently recognized her as a top lawyer in Family Law and she has been designated as a Super Lawyer of the Southwest. She received her B.S.B.A in Business Economics from the University of Arizona (1999) and her Juris Doctorate from the University of Denver College of Law (2002). When not practicing law, she enjoys traveling with her family and is a hot mess of a dance mom for her 11-year-old daughter.

DORI EDEN is a partner at Duenas Eden Cravatta, PLC. She received her Bachelor's Degree in 1999 from the University of Illinois at Urbana-Champaign and her Juris Doctor *(cum laude)* in 2002 from Case Western Reserve University School of Law. Within days of graduating law school, Dori moved to Phoenix in search of a new home city where she would not have to shovel snow. Dori began her legal career with a mid-sized law firm in Phoenix in 2002, and quickly began her career in family law. She became a partner, and after having two children decided it was best for her family to move her practice closer to home. In 2012, Dori opened her own firm in Ahwatukee. Since that time, the sole practice has grown to a partnership with Amy Duenas and Carrie Cravatta. Dori continues to practice primarily in family law, including handling family law appeals. Dori particularly enjoys contested legal decision making and parenting time cases. Dori also has experience in personal injury law, guardianship and conservatorships for adults and minors and juvenile law. She served as a judge pro tempore in Maricopa County for approximately five years. She is also very active in her community, serving on the Board of the Ahwatukee Foothills National Charity League from 2021-2023 and the Board of Managers for the Ahwatukee Foothills YMCA for eight years. Outside of law, Dori enjoys spending time with her husband and their two teenage daughters.

HON. PATRICIA A. GREEN is a Commissioner/Judge Pro Tem for the Arizona Superior Court in Pima County. Appointed in May 2012, she is currently assigned to the Family Law Bench, handling IV-D child support matters. Prior to being appointed to the Bench, Pat was a Shareholder with the Tucson law firm of Waterfall, Economidis, Caldwell, Hanshaw & Villamana, P.C., having joined the firm in August of 1998. Pat practiced primarily in the areas of family law and appellate law. She is a member of the State Bar of Arizona, the Pima County Bar Association, and the Arizona Minority Bar Association. Pat has served on the Executive Council of the State Bar's Family Law Section (2003 to 2016; Chair 2010-2011). She has also served as a member of the Board of Directors of the Pima County Bar Association (2005-2007), the State Bar of Arizona Board of Governors (2000-2002), the State Bar Committee on Minorities and Women in the Law (1997-1999 and 2002-2008), the State Bar Committee on Family Law Rules of Practice and Procedure (2009-2011), and the Morris K. Udall Inn of Court (1996-1999, 2011-2013). Before joining Waterfall, Economidis, Pat completed a two-year term as a Judicial Law Clerk for the Hon. William E. Druke (retired) and the Hon. M. Jan Flórez (retired), Division Two of the State of Arizona Court of Appeals (1996-1998).

Pat holds a Juris Doctorate (1996) from the University of Arizona James E. Rogers College of Law, and she was the Managing Editor of the ARIZONA LAW REVIEW from 1995-96. Pat received her Bachelor of Arts Degree (1976) from the University of Pennsylvania. Pat has been the recipient of several honors in the Tucson community, including: NAACP Honoree, 95th Annual Freedom Fund Banquet (October 2014); Tucson-Southern Arizona Black Chamber of Commerce Most Influential African Americans (2012 and 2013); YWCA Woman on the Move Honoree (February 2011); Volunteer Lawyers Program Outstanding Pro Bono Attorney of the Month (February 2010 and June

2004); University of Arizona Women's Plaza of Honor, Outstanding Leader in Law (April 2008). Pat was born in Philadelphia, Pennsylvania. She has three children, Lauren, Lorenzo and Christienne, six granddaughters, Jurnee, Lailah, Lael, Karsten, Diana and Caelan, and three grandsons, Lorenzo IV, Elijah and Lyric. Pat is married to Leroy Hunter, Jr., a native Tucsonan.

HONORABLE MICHAEL J. HERROD has served as a Judge on the Maricopa County Superior Court since July 2011. He is presently on a juvenile calendar, and has previously served on a civil calendar, a family court calendar, and a criminal calendar. Before joining the bench, Judge Herrod practiced law as a director of Schmitt, Schneck, Smyth & Herrod, P.C. in Phoenix, Arizona. He also maintained a branch office in Carefree, Arizona. His practice focused on adoption and juvenile law, probate and guardianship, real estate and civil litigation. Judge Herrod received his Bachelor of Arts degree in Psychology and German from Austin College in Sherman, Texas. He received his Doctor of Jurisprudence degree from the University of Texas at Austin. Judge Herrod was a Fellow of the American Academy of Adoption Attorneys from 1996 to 2011 when he took the bench. In 2011, he was named a Judicial Member. He is no longer a member of the Academy by his own choice. He was recognized as an Angel In Adoption by the Congressional Coalition on Adoption in 2001. Judge Herrod was a member of the Board of Legal Document Preparers, and remains a member of the Board of Nonlawyer Legal Service Providers administrated by the Arizona Supreme Court. Judge Herrod is also a member of the Spousal Maintenance Subcommittee of the Family Court Improvement Committee tasked by the Chief Justice with establishment of statewide spousal maintenance guidelines as mandated by the Arizona Legislature during the Fifty-fifth Legislature, 2nd Regular Session when it amended A.R.S. § 25-319(B). Judge Herrod has taught numerous seminars and continuing legal education programs, both as an attorney and as a judge.

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.

ERICA L. LEAVITT is a family law attorney with Schmillen Law who has extensive experience at both the trial and appellate court levels. Erica graduated summa cum laude from Arizona State University with a degree in political science. She then attended the Sandra Day O'Connor College of Law, where she graduated cum laude with pro bono distinction. After graduating law school, Erica clerked for the Honorable Judge Andrew Gould at the Arizona Court of Appeals. Since her clerkship, she has focused on Family law at both the trial and appellate levels. In addition to extensive trial court experience, she has also worked on numerous appeals in the Court of Appeals Division One and Two,

the Arizona Supreme Court, and has helped draft a Petition for Review to the United States Supreme Court. She has also argued several cases at the Court of Appeals, Division One.

KRISTI REARDON is a certified specialist in Family Law and practices at the Berkshire Law Office, PLLC. Kristi practices exclusively in the areas of family law and family law appeals. Kristi has extensive experience with Family Court appeals and her list of published decisions includes *Brucklier v. Brucklier*, *Kelly v. Kelly*, *Saba v. Khoury*, *Solorzano v. Jensen*, *Dole v. Blair*, *Barron v. Barron*, and *Berrier v. Rountree*. Kristi is the author of Thomson Reuters' Arizona Legal Forms: Family Law, Fourth Edition (2020). Kristi is AV rated by Martindale Hubbell and has been recognized as a Rising Star by Super Lawyers.

LYNDA C. SHELY, of The Shely Firm, PC, Scottsdale, Arizona, provides legal ethics and regulatory advice to lawyers and law firms. 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 is chair of the ABA Standing Committee on Ethics and Professional Responsibility, an Arizona Delegate in the ABA House of Delegates, and 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. She is a past president of the Association of Professional Responsibility Lawyers and the Scottsdale Bar Association and has been an adjunct professor at all Arizona law schools, teaching professional responsibility. 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 profession including most recently the 2022 Maricopa County Bar Association Member of the Year Award.

CLE by the SEA 2023

Family Law Track
Day 1

July 10, 2023
8:15am – 12:30pm

State Bar of Arizona presents CLE by the Sea

July 9, 2023 – July 12, 2023

Changes in Order of Protection, July 10th, 2023

Presented by Carrie Cravatta, Amy Duenas, Dori Eden, of Duenas Eden Cravatta; the Honorable Patricia Green of the Pima County Superior Court; and the Honorable Suzanne Cohen of the Maricopa County Superior Court.

1. Changes in Orders of Protection

    a. Duration of 2 years if served after 9/24/22 (amended on ER basis 8/29/22 permanently adopted 1/1/2023):

        i. Rule 23 (j) RPOP
        (j) Effectiveness. An Order of Protection takes effect when the defendant is served with a copy of the order and the petition. An Order of Protection that is served on or after September 24, 2022, is in effect for two years from date of service. An Order of Protection served before September 24, 2022, is in effect for one year from date of service. A modified Order of Protection takes effect upon service and expires the same date as the initial order upon which it is based. See A.R.S. § 13-3602(N).

    b. Lifetime No Contact Orders effective 12/8/2022:

        i. Rule 43 RPOP
        (a) Applicability. This rule governs petitions that are filed under A.R.S. § 13-719(D) for the issuance of an Order for Lifetime No-Contact Injunction against a defendant sentenced before September 24, 2022 for a conviction of an offense listed in A.R.S. § 13-719(A).

        (b) Qualifying Convictions. A qualifying conviction for an Order for Lifetime No-Contact Injunction issued under this rule is a conviction of any of the following offenses, whether completed or preparatory, unless the conviction has been dismissed, expunged, or overturned, or the defendant has been pardoned:

            (1) a dangerous offense as defined in A.R.S. § 13-105 that is also a felony;
            (2) a serious offense or violent or aggravated felony as defined in A.R.S. § 13-706; or
            (3) a felony offense included in Title 13, Chapter 14 or 35.1.

(c) Who may File. The victim, the victim's attorney, the victim's legal guardian, or the prosecutor may file the petition, except that if the victim requesting the Order for Lifetime No-Contact Injunction is a minor, unless the court determines otherwise, the parent, legal guardian, or person who has statutorily defined legal custody of the minor victim must file the petition or may authorize the prosecutor or the minor victim's attorney to file the petition. "Victim" as used in this rule and in Rule 4(e) has the same meaning as set forth in A.R.S. § 13-4401.

(d) Place of Filing. The petition must be filed in the court in which the defendant was sentenced.

(e) Petition; Supporting Documentation.

(1) Required Information. The petition must include:

(A) whether the filer is the victim or an authorized filer as set forth in Rule 43(c);
(B) the defendant's name and date of birth;
(C) the eligible conviction that forms the basis of the request;
(D) whether the victim and the defendant have existing orders in place under A.R.S. Title 25 regarding parenting time or decision-making or under A.R.S. Title 8; and
(E) the criminal case number for the conviction.

(2) Other Information, if Available. The petition should also include, if available:

(A) the defendant's address, telephone number, and email address;
(B) the defendant's whereabouts or information regarding the best location for service;
(C) the defendant's name at the time of arrest if different than the defendant's current name; and
(D) a copy of the sentencing order.

(3) Declaration Under Penalty of Perjury. The filer must sign the petition with the following declaration: "I declare under penalty of perjury that the information I have provided in this petition and any attachments is true and correct to the best of my knowledge."

(4) Confidential Victim Information Sheet. The filer must attach a completed Confidential Victim Information Sheet to the petition.

(5) Supporting Documentation. The court may request supporting documentation to verify that the offense for which the defendant was convicted is a qualifying offense.

(f) Continuing Duty to Provide Current Address. The victim has a continuing duty to provide the clerk of the court with a current and correct phone number and mailing address where the victim can be notified. To update contact information, the victim must file an Updated Confidential Victim Information Sheet.

(g) Notice to the Defendant. The court must provide the defendant's sentencing counsel notice of the victim's petition, which must include the information provided in the victim's petition under Rule 43(e)(1)-(3) and (5), by mailing the notice to counsel's last known address. Upon receipt, counsel must forward the notice to the defendant's last known address. If the defendant was unrepresented by counsel at sentencing, the court must provide notice of the petition to the defendant, which must include the information provided in the victim's petition under Rule 43(e)(1)-(3) and (5), by mailing the notice to the defendant's last known address. The defendant may file a written response, but it must be filed with the court no later than 21 days after the court mails the notice to counsel or the defendant.

(h) Processing the Petition. If the court determines that the conviction is a qualifying offense, the court must issue the Order for Lifetime No-Contact Injunction and provide a copy to the victim. If the court determines that the conviction is not a qualifying conviction, the court must issue a written order stating the reason for denial and provide a copy of the order to the victim.

(i) Service. If the court issues an Order for Lifetime No-Contact Injunction, a copy of the order must be personally served on the defendant. There is no requirement that the copy of the order served on the defendant be certified.

(1) Who Can Serve. An Order for Lifetime No-Contact Injunction issued under A.R.S. § 13-719(D) must be served by the sheriff or other law enforcement officer, or a process server.

(2) Service by Sheriff or Other Law Enforcement Officer. The victim, the victim's attorney, the victim's legal guardian, or if the victim is a minor, the minor's parent, legal guardian, or person who has statutorily defined legal custody of the minor victim, may initiate service by the sheriff or other law enforcement

officer by delivering a copy of the Order for Lifetime No-Contact Injunction to the sheriff of the issuing county or other appropriate law enforcement agency. A fee cannot be charged for service by the sheriff or other law enforcement agency.

(3) Proof of Service. Proof of service must be promptly filed with the clerk of the issuing court as soon as practicable after service but no later than 72 hours, excluding weekends and holidays. Proof of service may be submitted by facsimile, electronically, or in person.

(4) Notifying the Department of Public Safety ("DPS"). Upon receiving proof of service, the clerk or other court staff must forward a copy of the returned proof of service, the Order for Lifetime No-Contact Injunction, and Confidential Victim Information Sheet to DPS to register the Order for Lifetime No-Contact Injunction with the National Crime Information Center.

(j) Validity; Dismissal. An Order for Lifetime No-Contact Injunction issued under A.R.S. § 13-719(D) is effective on service and is valid for the defendant's natural lifetime unless it is dismissed.

(1) Dismissal on Request of the Victim. The victim may make a request to the court to dismiss the Order for Lifetime No-Contact Injunction at any time by filing a written motion to dismiss. Court personnel must verify the victim's identity when the motion is filed. The court may schedule a hearing to verify the victim's request and that the victim is not making the request under duress or coercion. The court must grant the victim's request upon verification, issue a written order, and provide a copy to the victim and the defendant.

(2) Dismissal on Request of the Defendant. The defendant, by filing a written motion, may request dismissal of an Order for Lifetime No-Contact Injunction only if:

(A) the victim has died;
(B) the conviction on which the Order for Lifetime No-Contact Injunction is based has been dismissed, expunged, or overturned, or the defendant has been pardoned; or
(C) the conviction on which the Order for Lifetime No-Contact Injunction is based is not a qualifying conviction.

(3) Granting the Defendant's Request to Dismiss. The court must grant the defendant's request for dismissal upon a showing that one of the circumstances in (i)(2) exists.

(4) Notification; Response. Before granting a defendant's request to dismiss an Order for Lifetime No-Contact Injunction based on (i)(2)(B) or (C), the court must notify the victim of the request and give the victim an opportunity to file a written response.

(k) Public Access to Petition or Injunction Information.

(1) The court must not make publicly available any information regarding the filing of or contents of a petition for or issuance of an Order for Lifetime No-Contact Injunction issued under this rule until proof of service of the Order for Lifetime No-Contact Injunction has been filed with the court. The court may share information about the Order for Lifetime No-Contact Injunction with the victim, the victim's attorney, the victim's legal guardian, or, if the victim is a minor, the parent, legal guardian, or person who has statutorily defined legal custody of the minor victim, and with prosecutors or law enforcement if necessary to carry out their official responsibilities.

(2) The Confidential Victim Information Sheet filed under (e)(4) may be provided to DPS under (i)(4) but cannot otherwise be made available to the public or the defendant to inspect, obtain copies of, or otherwise have access.

(l) Forms. Courts must provide, without charge, lifetime no-contact injunction forms. To assist law enforcement with recognizing an Order for Lifetime No-Contact Injunction so that law enforcement can prioritize these orders and not assess a fee for service, courts and parties must use only the forms approved by the Director of the Administrative Office of the Courts. Courts may make margin and caption changes.

c. Rule 31 Service of Protective Orders, effective 9/24/2022 states:

(a) Who Can Effect Service. A protective order can be served only by a person authorized by Rule 4(d), Arizona Rules of Civil Procedure, A.R.S. §§ 13-3602(K), 12-1809(S), or 12-1810(S) or as otherwise provided in this rule.

(b) Expiration of an Unserved Order. A protective order expires if it is not served on the defendant, together with a copy of the petition, within

one year from the date the judicial officer signs the protective order. See A.R.S. §§ 13-3602(N), 12-1809(J) and 12-1810(I).

(c) Transmission of an Order of Protection. Upon issuance of an Order of Protection, a court must transmit the documents for service to the appropriate law enforcement agency or constable. The court may accomplish transmission of the Order of Protection and accompanying documents by using a service portal managed by the Administrative Office of the Courts. But if the portal is unavailable for any reason, the issuing court must provide the documents to law enforcement in some other manner. The court must transmit the documents on the same day the Order of Protection is issued, unless the judicial officer makes a finding on the record that extraordinary circumstances exist. If the judicial officer delays service because of extraordinary circumstances, the judicial officer must indicate a time, not to exceed 72 hours, by which the court must transmit the order to the appropriate law enforcement agency or constable for service.

(d) Certification Not Required. There is no requirement that the copy of the order served on the defendant be certified.

(e) Service of a Modified Order. The service and registration requirements applicable to the original protective order also apply to a modified protective order.

(f) Acceptance of Service. A defendant may sign an acceptance of service form, which has the same effect as service. If the defendant refuses to sign an acceptance of service form, the judicial officer may have the defendant served in open court. In superior court, the minute entry must reflect the method of service that was used.

(g) Service in Court. If the defendant is present in court and refuses to sign an acceptance of service form, the judicial officer must have the defendant served in open court by a person specially appointed by the court. A judicial appointment to effectuate service may be granted freely, is valid only for the service of the protective order or modification entered in the cause, and does not constitute an appointment as a registered private process server. A specially appointed person directed to serve such process must be a court employee who is at least 21-years old and cannot be a party, an attorney, or the employee of an attorney in the action whose process is being served. If such an appointment is entered on the record, a signed order is not required provided a minute entry reflects the special appointment and the nature of service.

(h) Service at the Scene. If a defendant is physically present with the plaintiff and has not yet been served, a peace officer may be summoned

to the scene and may use the plaintiff's copy of the protective order to effect service on the defendant.

(i) Filing the Proof of Service. Proof of service must be promptly filed with the clerk of the issuing court as soon as practicable after service but no later than 72 hours, excluding weekends and holidays. Proof of service may be submitted by facsimile, electronically, or in person. See A.R.S. §§ 13-3602(P), 12-1809(L) and 12-1810(K).

2. Other updates as of 1/1/2023:

   a. Rules 3
      i. Language in (c)(3) deleted, (e) revised and added (g)

   b. Rule 14
      i. Language in (1) (B) and (2) revised.

   c. Rule 24 Emergency Orders of Protection
      i. (E) Duration changed.

   d. Rule 25
      i. (e)(1)(A) Findings revised.
      ii. (i) Effectiveness revised

   e. Rule 26
      i. (h) Effectiveness revised.

   f. Rule 30
      i. Statutory reference revised.

   g. Rule 32
      i. (b) language revised.

3. Modification of Petition at Hearing

   a. Rule 38 (d) revised 1/1/2022 to allow for an amended Petition at the time of the contested hearing.

      i. Arizona Rules of Protective Order Procedure, Rule 38 (d) states, "**(d) Amended Petition.** At a contested hearing, if a plaintiff seeks to testify or present evidence about relevant allegations that were not included in the petition, the court must:

         (1) allow the plaintiff to amend the petition in writing on a form provided by the court, a copy of which the court must immediately provide to the defendant; and

(3) offer the defendant each of the following options:

(A) a continuance of the hearing, within the timeframes specified by Rule 38(b), to allow the defendant the opportunity to prepare for the additional allegations; or
(B) a brief recess to allow the defendant the opportunity to review the amended petition and prepare for the additional allegations; or
(C) an explanation of the options above and an opportunity to waive them. If the defendant waives both the opportunity for a continuance or a brief recess, then the court must proceed with the contested hearing on the amended petition that includes the additional allegations.

b. (g) is also revised and includes former sections (e), (f), (g), (h), and (i).

4. Acts of Domestic Violence

a. Types of Abuse:
   i. Physical abuse

   ii. Control
      1. Monitoring phone calls, texts, and monitoring devices
      2. Checking mileage on odometer
      3. Not allowing freedom of choice in clothes, hairstyle, forcing victim to dress a certain way
      4. Not allowing victim time and space of their own

   iii. Sexual abuse

   iv. Emotional abuse and intimidation
      1. Insulting or criticizing to undermine victim's self confidence
      2. Humiliation in public
      3. Gaslighting
      4. Telling victim they are mentally unstable or incompetent

   v. Isolation
      1. Not an isolated or specific incident, but many incidents and variations on other types of abuse as well
      2. Keeping victim socially or religiously isolated

   vi. Verbal abuse: coercion, threats and blame

   vii. Using male privilege
      1. Can include physical abuse

viii. Economic abuse
    1. Controlling family income
    2. Not allowing access to money or limiting access
    3. Spending money on nonessential items instead of necessities for family

ix. Stalking

b. Domestic Violence
    i. A.R.S. §13-3601. Domestic violence; definition; classification; sentencing option; arrest and procedure for violation; weapon seizure

> A. "Domestic violence" means any act that is a dangerous crime against children as defined in section 13-705 or an offense prescribed in section 13-1102, 13-1103, 13-1104, 13-1105, 13-1201, 13-1202, 13-1203, 13-1204, 13-1302, 13-1303, 13-1304, 13-1406, 13-1425, 13-1502, 13-1503, 13-1504, 13-1602 or 13-2810, section 13-2904, subsection A, paragraph 1, 2, 3 or 6, section 13-2910, subsection A, paragraph 8 or 9, section 13-2915, subsection A, paragraph 3 or section 13-2916, 13-2921, 13-2921.01, 13-2923, 13-3019, 13-3601.02 or 13-3623, if any of the following applies:
>
> 1. The relationship between the victim and the defendant is one of marriage or former marriage or of persons residing or having resided in the same household.
>
> 2. The victim and the defendant have a child in common.
>
> 3. The victim or the defendant is pregnant by the other party.
>
> 4. The victim is related to the defendant or the defendant's spouse by blood or court order as a parent, grandparent, child, grandchild, brother or sister or by marriage as a parent-in-law, grandparent-in-law, stepparent, step-grandparent, stepchild, step-grandchild, brother-in-law or sister-in-law.
>
> 5. The victim is a child who resides or has resided in the same household as the defendant and is related by blood to a former spouse of the defendant or to a person who resides or who has resided in the same household as the defendant.
>
> 6. The relationship between the victim and the defendant is currently or was previously a romantic or sexual relationship. The following factors may be considered in determining whether

the relationship between the victim and the defendant is currently or was previously a romantic or sexual relationship:

(a) The type of relationship.

(b) The length of the relationship.

(c) The frequency of the interaction between the victim and the defendant.

(d) If the relationship has terminated, the length of time since the termination.

ii. A.R.S. §13-3601 "Cheat Sheet"

1. 13-705: Dangerous crimes against children
2. 13-1102: Negligent Homicide
3. 13-1103: Manslaughter
4. 13-1104: Second Degree Murder
5. 13-1105: First Degree Murder
6. 13-1201: Endangerment
7. 13-1202: Threatening or Intimidating
8. 13-1203: Assault
9. 13-1204: Aggravated Assault
10. 13-1302: Custodial Interference
11. 13-1303: Unlawful Imprisonment
12. 13-1304: Kidnapping
13. 13-1406: Sexual Assault
14. 13-1425: Unlawful disclosure of images depicting states of nudity or specific sexual activities
15. 13-1502: Criminal trespass, third degree
16. 13-1503: criminal trespass, second degree
17. 13-1504: Criminal trespass, first degree
18. 13-1602: Criminal damage
19. 13-2810: Interference with Judicial proceedings.
20. 13-2904: subsection A, paragraph 1, 2, 3 or 6: Disorderly conduct
21. 13-2910: subsection A, paragraph 8 or 9: Cruelty to Animals
22. 13-2915: subsection A, paragraph 3: Preventing Use of Telephone in an Emergency
23. 13-2916: Use of telephone to terrify, intimidate, threaten, harass, annoy or offend
24. 13-2921: Harassment
25. 13-2921.01: Aggravated Harassment
26. 13-2923: Stalking
27. 13-3019: Surreptitiously photographing, videotaping, filming or digitally recording a person

28. 13-3601.02: Aggravated domestic violence
29. 13-3623: Child or Vulnerable Adult abuse

5. Legal Decision Making and Parenting Time (Updated 1/1/22, formerly R4)

   a. Rule 35 RPOP states:

> (a) Provisions for Legal Decision-Making and Parenting Time. Except as otherwise provided in this rule, a protective order cannot contain provisions regarding legal decision-making or parenting time issues. Legal issues such as maternity, paternity, child support, legal decision-making, parenting time, dissolution of marriage, or legal separation may be addressed only by the superior court in a separate action under A.R.S. Title 25.
>
> (b) Contact Between a Child and a Defendant Who Have a Legal Relationship. Before granting a protective order prohibiting contact with a child with whom the defendant has a legal relationship, the judicial officer must consider:
>
> > (1) whether the child may be harmed if the defendant is permitted to maintain contact with the child, and
> > (2) whether the child may be endangered if there is contact outside the presence of the plaintiff.
>
> (c) Provisions for Parenting Time and Child Exchanges.
>
> > (1) A limited jurisdiction court that issues an order prohibiting contact with the plaintiff cannot include exceptions that allow the defendant to come near or contact the plaintiff in person for legal decision-making or parenting time with a child. A limited jurisdiction court may allow contact by mail or e-mail to arrange parenting time and may provide for child exchanges under circumstances not involving contact with the plaintiff in person.
> >
> > (2) A superior court judicial officer may issue a protective order or modify an existing protective order that includes an exception allowing the defendant to come near or contact the plaintiff in person to implement a legal decision-making or a parenting time order after considering the following factors and making specific findings on the record:
> >
> > > (A) feasible alternatives regarding contact to carry out the legal decision-making or parenting time order, such as

exchanges at a protected setting, a public facility or other safe haven, or through a third person;
(B) the parties' wishes;
(C) each party's history of domestic violence;
(D) the safety of the parties and the child;
(E) each party's behavioral health; and
(F) reports and recommendations of behavioral health professionals.

(d) Modification of an Existing Protective Order. Any change made by a superior court judicial officer to an existing protective order must be included in a modified protective order. Each change must be set forth in the modified protective order with sufficient detail to assure understanding and compliance by the parties and ease of enforcement by law enforcement officers. The superior court judicial officer must obtain an acceptance of service signed by the defendant if the parties are present at the time the modification is made. If the defendant refuses to sign an acceptance of service, the judicial officer must have the defendant served in open court in accordance with Rule 31.

(e) Active Legal Decision-Making Order. When a family law action is not pending but there is an active legal decision-making order issued by an Arizona court that involves a child of the defendant, a limited jurisdiction court may issue an ex parte protective order but then must transfer the matter to the superior court in accordance with procedures set forth in Rule 34.

(f) Defendant is a Non-Parent of Child. When a harassment injunction involves a child who is not the defendant's legal or biological child, the limited jurisdiction court may issue an ex parte protective order and conduct any contested hearings. To the extent the order affects the parenting rights of the person who is not a party to the harassment injunction action, the remedy for such a person is under Rule 91.6 of the Rules of Family Law Procedure.

b. Cases of note in relation to legal decision making, parenting time and domestic violence:

    i. Court of Appeals Division 1 (NOT FOR PUBLICATION, PER RULE 111(c)):
        1. Jones-Wright v. Wright, No. 1 CA-CV 22-0479 FC

    ii. Court of Appeals Division 2:
        1. In re Marriage of Morris, No. 2 CA-CV 2022-0083-FC

6. Exclusive Use of a Residence
    a. Rule 23 (h) states:

When issuing an Order of Protection, ex parte or after a hearing, a judicial officer may:

(1) prohibit the defendant from having any contact with the plaintiff or other protected persons, with any exceptions specified in the order. See A.R.S. § 13-3602(G)(3).

(2) grant the plaintiff exclusive use of the parties' residence if there is reasonable cause to believe that physical harm otherwise may result. See A.R.S. § 13-3602(G)(2). If the plaintiff moves out of the residence while the order is in effect, the plaintiff must file a written notice with the court within five days after moving. Upon receipt, the court must provide a copy of the notice to the defendant and advise of the right to request a hearing pursuant to A.R.S. § 13-3602(L).

(A) A plaintiff who is not the owner of the residence may be granted exclusive use for a limited time.
(B) The defendant may be permitted to return one time, accompanied by law enforcement, to pick up personal belongings.
(C) At a contested hearing, a judicial officer may consider ownership of the parties' residence as a factor in continuing the order of exclusive use.

(3) order the defendant not to go on or near the residence, place of employment, or school of the plaintiff or other protected persons. Other specifically designated locations may be included in the order. If the defendant does not know the address of these additional places, a judicial officer may, at the plaintiff's request, protect the additional addresses. See A.R.S. § 13-3602(G)(3).

(4) grant the plaintiff the exclusive care, custody, or control of any animal that is owned, possessed, leased, kept, or held by the plaintiff, the defendant, or a minor child residing in the residence or household of the plaintiff or the defendant and order the defendant to stay away from the animal and forbid the defendant from taking, transferring, encumbering, concealing, committing an act of cruelty or neglect in violation of A.R.S. § 13-2910, or otherwise disposing of the animal. See A.R.S. § 13-3602(G)(7).

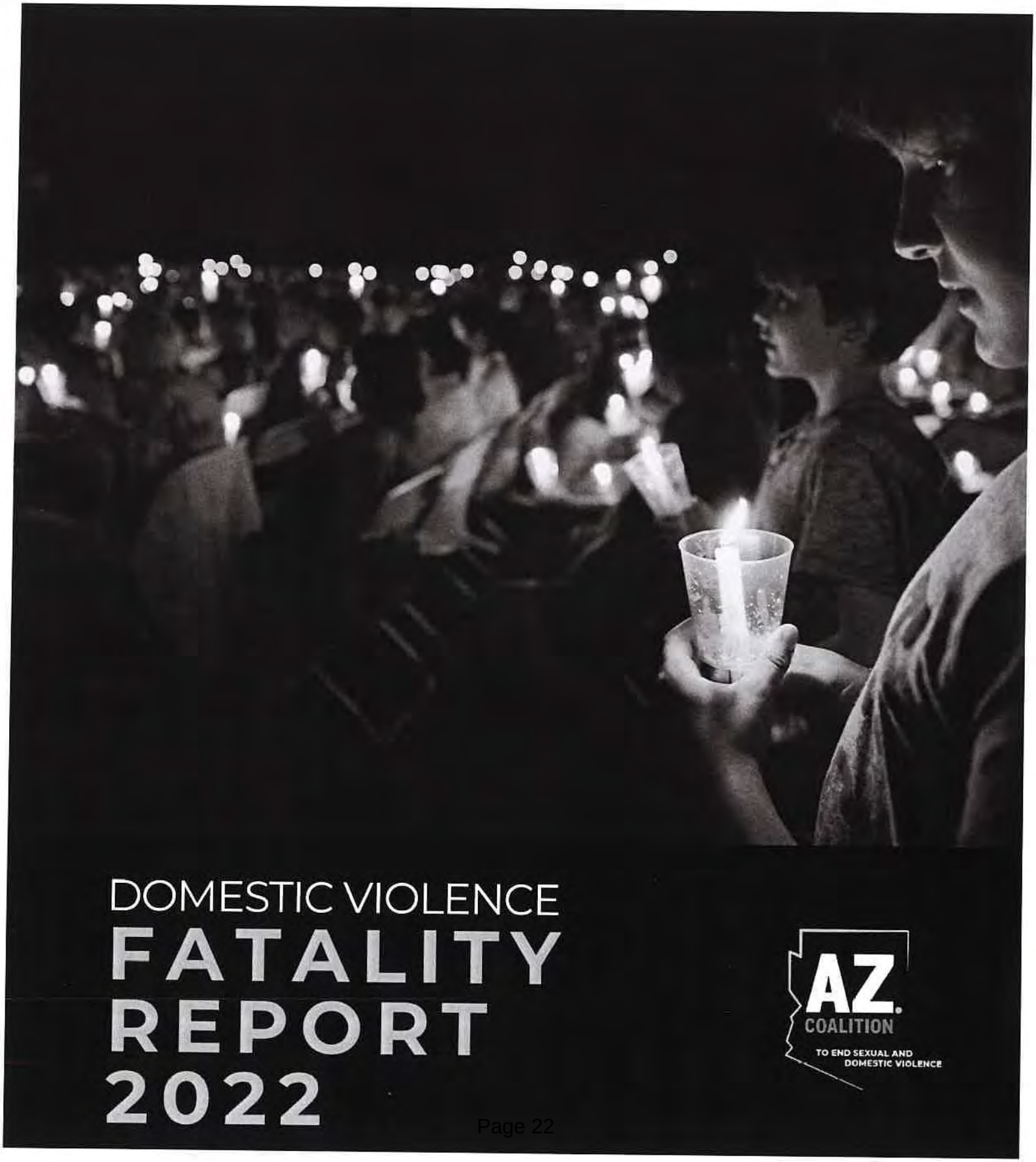
(5) grant relief that is necessary for the protection of the plaintiff and other specifically designated persons and proper under the circumstances. See A.R.S. § 13-3602(G)(6).

b. Rule 24 has same language in (c)(2)

7. Exhibits in Hearings on Order of Protection
    a. Procedure for submitting exhibits at Order of Protection hearing is different than at a temporary order hearing or for a final trial.
        i. Instruction Sheet provided by Court.

8. Considerations for you and your client at OOP hearings
    a. If Defendant testifies, consider his/her 5th Amendment / Right to Remain Silent as statements made could be used against him or her at a future criminal proceeding.

9. Don't Forget and Hot Topics
    a. Don't forget: update the Clerk of Court with any new address
    b. Including children on OOPs



DOMESTIC VIOLENCE FATALITY REPORT 2022

AZ COALITION TO END SEXUAL AND DOMESTIC VIOLENCE

DEDICATION

This report is dedicated to those whose lives were ended as a result of domestic violence.

AZ COALITION TO END SEXUAL AND DOMESTIC VIOLENCE

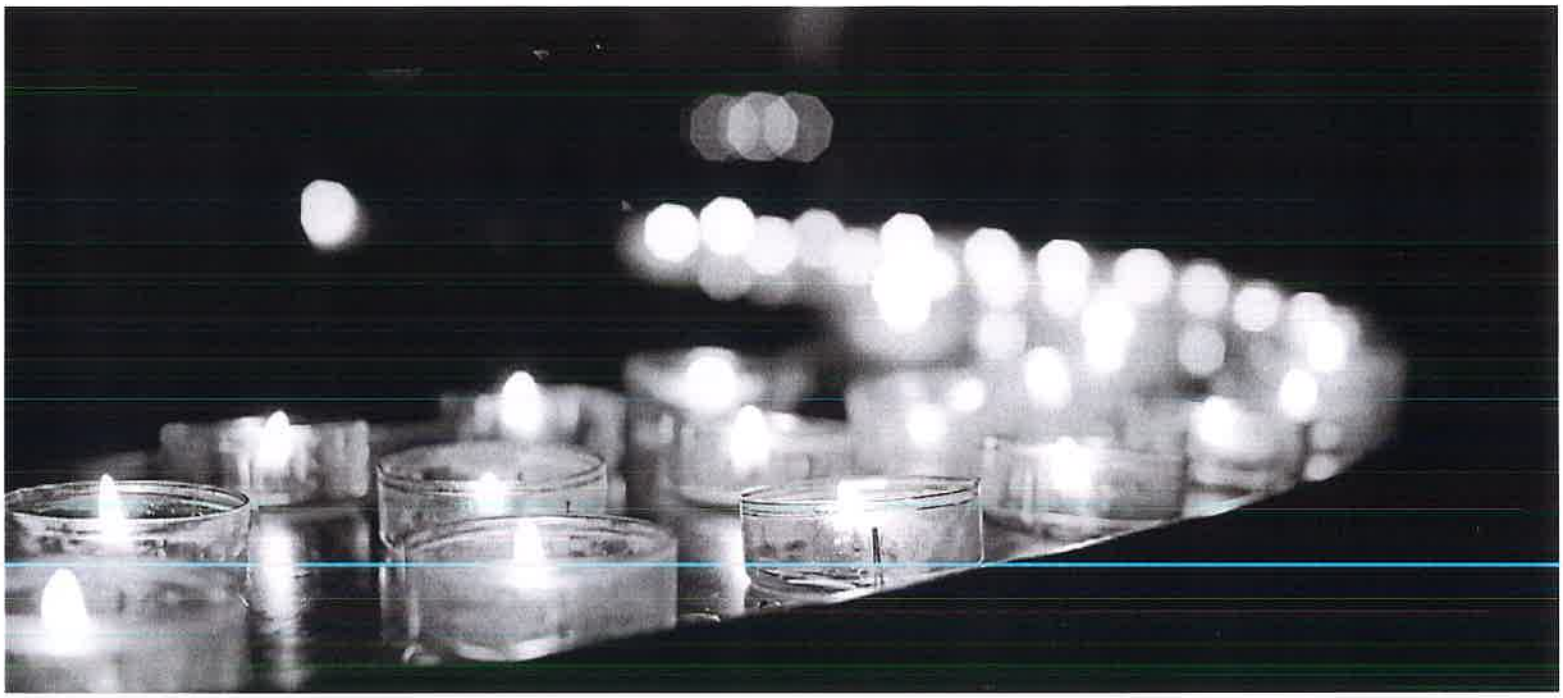
REPORT OVERVIEW

In 2022, The Arizona Coalition to End Sexual and Domestic Violence documented 101 known domestic violence-related fatalities across Arizona. These incidents were identified using an online media monitoring service that uses topical keywords related to domestic violence to produce articles from around the state. While this method of data collection generates a fairly comprehensive list of domestic violence-related fatalities, this list should not be considered exhaustive. The data contained in this report is limited, as it captures only those fatalities reported in online media publications. If your friend or family member is not listed, please contact us to add their name.

Arizona consistently ranks among the top states with the highest homicide rates of women murdered by men. In fact, between 2009 and 2022, there were 1,459 domestic violence related deaths. These tragedies represent a small fraction of the violence that occurs within intimate and family relationships and reminds us of the potential for lethality in relationships where domestic violence is present. It is critical that survivors are heard and supported in accessing safety and healing.

For more information about this report or for media inquiries, please contact:

Arizona Coalition to End Sexual and Domestic Violence
Jenna Panas, (602) 902-1994
Jenna@acesdv.org

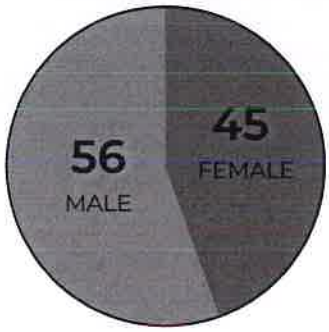


2022 DEATHS

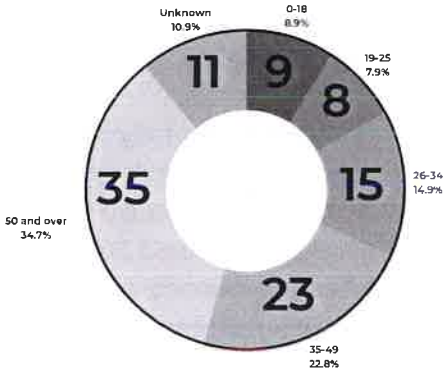
TOTAL VICTIMS

101

VICTIMS BY GENDER



VICTIMS BY AGE

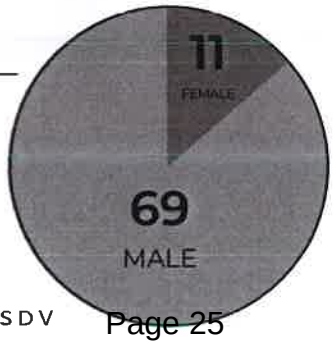


PERPETRATOR DATA

PERPETRATORS BY GENDER

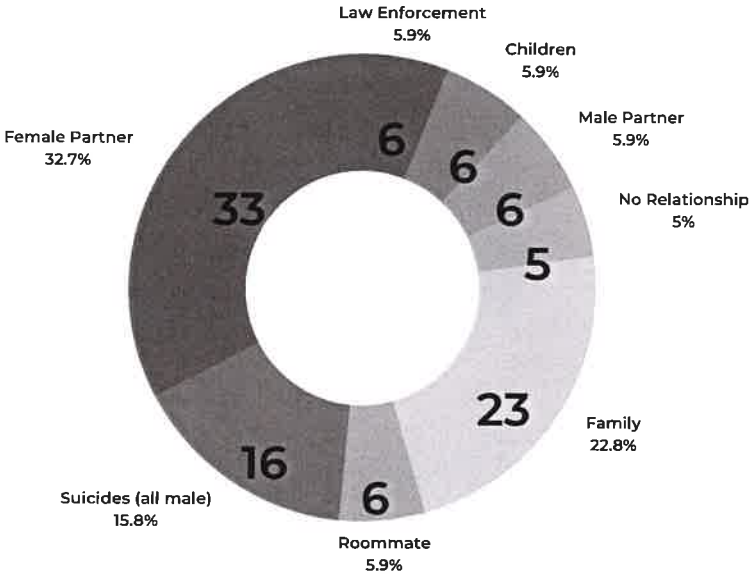
TOTAL PERPETRATORS

80



- Female perpetrators killed 1 child, 6 male partners, and 4 family members
- Male perpetrators killed 5 children, 5 bystanders, 19 family members, 6 roommates, 1 unknown relationship, and 33 intimate partners

RELATIONSHIPS

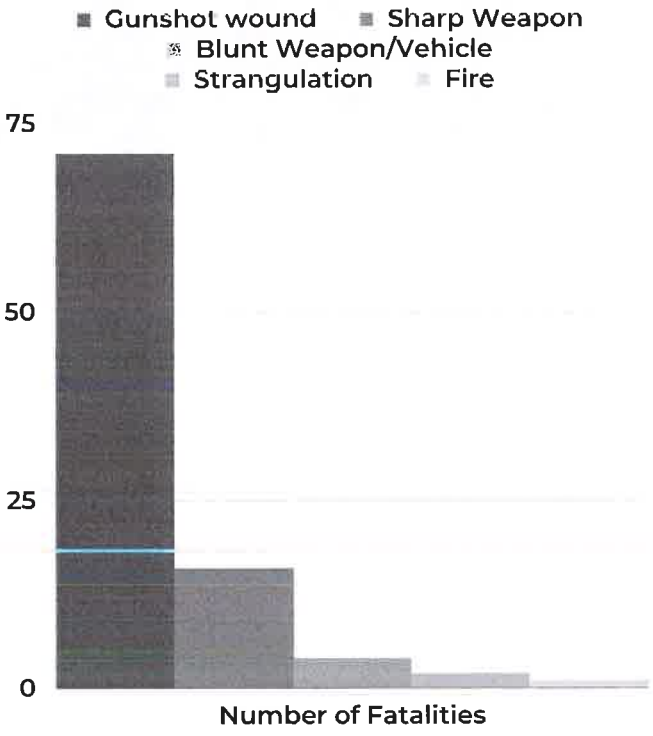


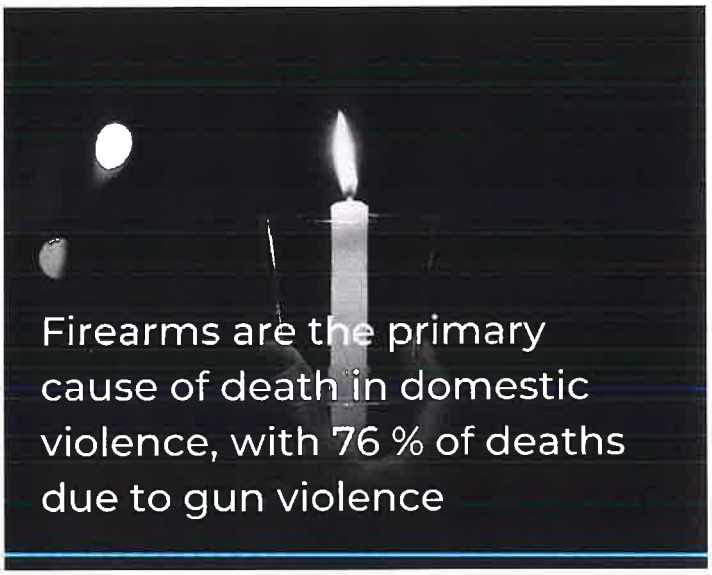
- Of the 6 homicides of a male partner by a female, 4 stated it was in self defense due to prior harm.
- Of the 33 homicides of a female partner by a male partner, 2 claimed self defense which was later refuted by evidence.
- 9 of the 36 Intimate Partner Homicides (23%) had known prior reports of abuse or orders of protection in place.
- 7 events involved the perpetrator killing more than one person, excluding the 16 murder-suicides

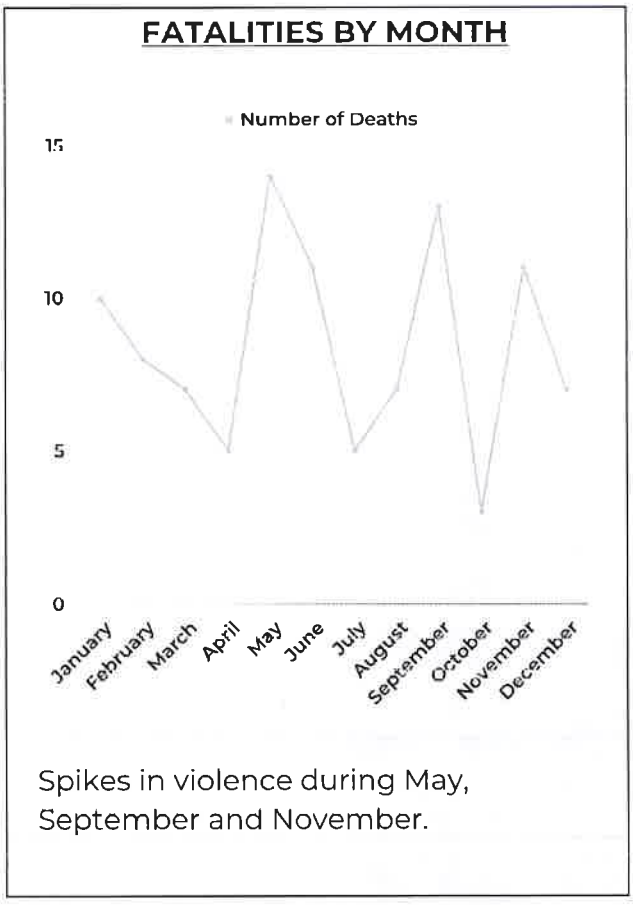
50
FEMALE VICTIMS

26
MALE VICTIMS (EXCLUDING POLICE SHOOTINGS AND SUICIDE)

METHODS







IRENE'S STORY

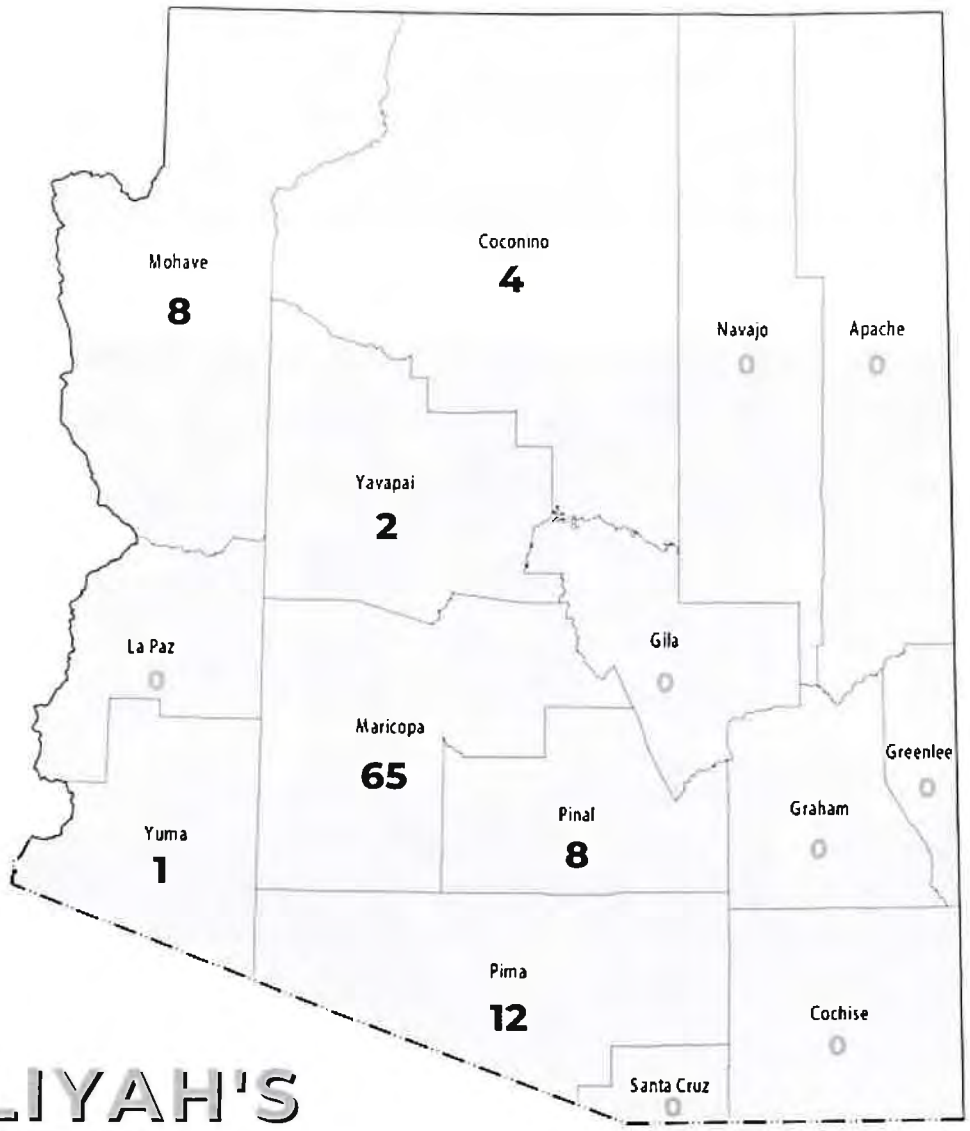
Irene Luevano was 37 years old, a mother of six children, and a recent grandmother. She was loved by her family, with her mother saying, " I have her in my heart and I'll always be praying for her."

Irene, a victim of domestic violence, was stabbed in the neck by her boyfriend early in the morning in January of 2022. She called her family for help and asked them to contact the police. Her family attempted to call her back but could not reach her. After several days, Irene's body was found in the desert in Western Arizona, with multiple stab wounds.

Her family is left heartbroken, with her children, her mother and her siblings all suffering the loss. Irene's family member said that "She means the world to me... she's my other half. We've been through a lot." Irene's family honors her memory with a memorial of candles and pictures in place at her Phoenix home.

TOTAL NUMBER OF VICTIMS BY COUNTY

In 2022, **101 victims** were killed due to domestic violence in Arizona.



There are consistent rates of homicide throughout Arizona relative to population, with exception of Mohave county.

TALIYAH'S STORY

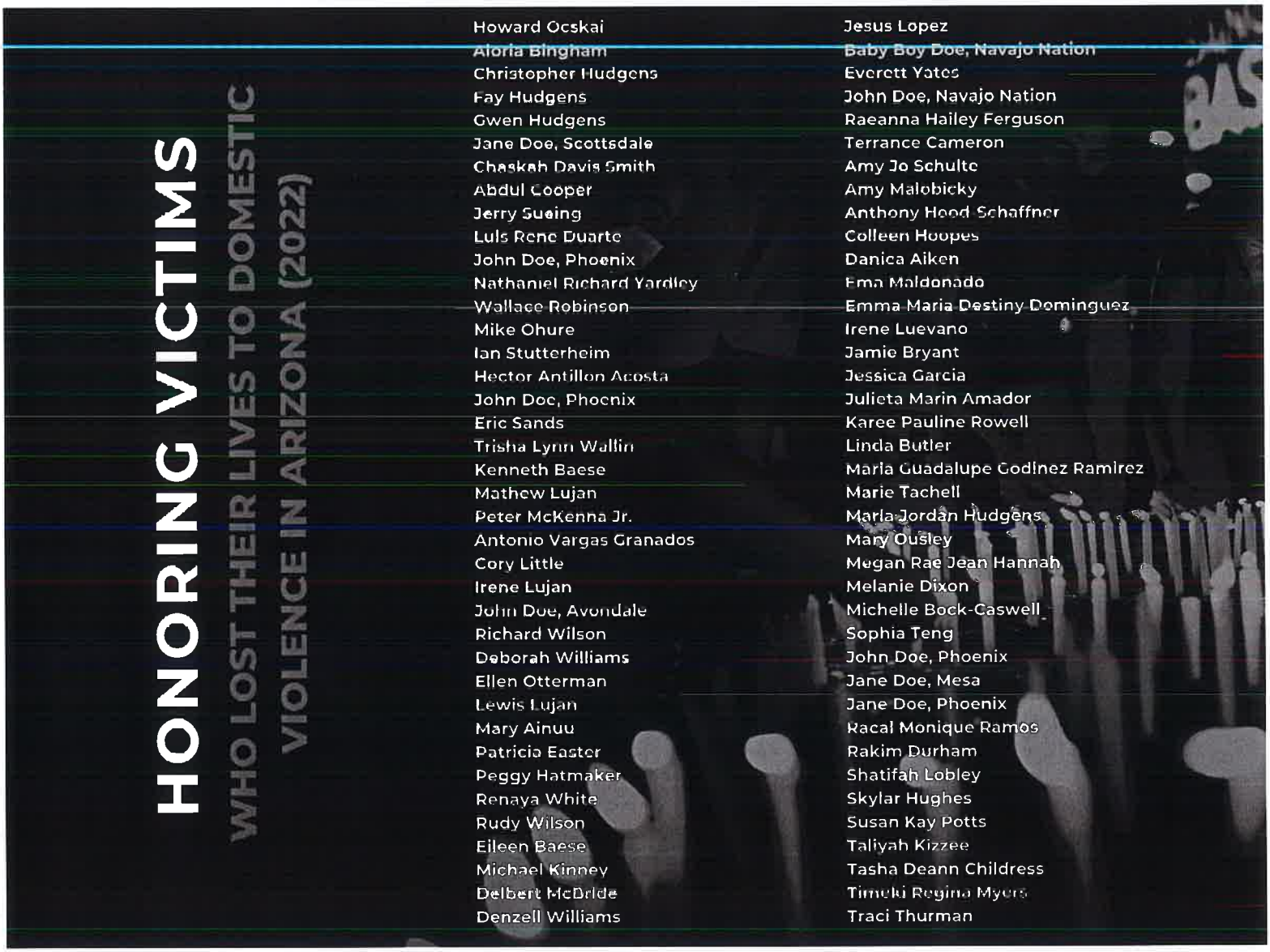
Taliyah Kizzee, called TeeTee by friends and family, was only 20 years old and the youngest of six siblings. She made the decision to leave her boyfriend because he was controlling and physically abusive.

Her ex-boyfriend, in searching for Taliyah after their breakup, threatened to shoot three of Taliyah's family members and forced a family friend into a car, threatening to kill the friend and made them drive around to find Taliyah. Taliyah was shot and killed by her boyfriend in November of 2022, a victim of domestic violence and gun violence.

Social media left after her death paints a portrait of a beautiful, charismatic young woman remembered as kind and funny by family and friends.

NATHANIEL'S STORY

Nathaniel Yardley Jr. was from White River, Arizona and was 29 years old. He was from a large family with seven sisters and a brother. He was a father to two boys, and had many cousins, aunts, uncles, nieces, nephews and friends. He was taken from his family by domestic violence.
In August 2022, Nathaniel was stabbed by his girlfriend in Glendale multiple times with a kitchen knife. He later passed away at the hospital. His girlfriend was on probation for prior domestic violence assaults.



LOCAL PROGRAMS

Arizona has a statewide network of local domestic violence programs that are ready to help. Arizonasurvivors.org for more information.

Apache
ADABI (AmaDoo Alchini Bighan)
New Hope Ranch
Eve's Place

Cochise
Chiricahua Community Health Centers
Cochise FamilyAdvocacy Center
Forgach House
House of Hope

Coconino
Childhelp Mobile Advocacy Center of Northern Arizona (children only)
Northern Arizona Care and Services After Assault (NACASA)
North Country HealthCare Clinics
Northland Family Help Center
Victim Witness Services for Northern Arizona

Gila
Childhelp – Gila Children's Mobile Advocacy Center
Gila SafeHaven Domestic Violence Safe Home + Alderman House
San Carlos Apache Healthcare Corporation Social Services
Time Out, Inc.

Graham
Mt. Graham SafeHouse

La Paz
Colorado River Regional Crisis Services
Eve's Place

Maricopa
Agnes' Center for Domestic Solutions
A New Leaf – Autumn House
A New Leaf– Faith House
Area Agency on Aging, Region One DOVES
Arizona South Asians for Safe Families
BLOOM365
CARE7
Catholic Charities – My Sister's Place
Catholic Charities – Pathways
Chandler Family Advocacy Center
Chicanos Por La Causa –De Colores
Chrysalis
Fort McDowell Yavapai Nation Domestic Violence Program
Glendale Family Advocacy Center
Jewish Family and Children's Services, Shelter Without Walls
La Frontera EMPACT
Mesa Family Advocacy Center
New Life Center
Phoenix Family Advocacy Center
Punjabi Seva
Salt River Pima Maricopa Indian Community Family Advocacy Center
Scottsdale Family Advocacy Center
Sojourner Center
Southwest Family Advocacy Center
Winged Hope– Family Advocacy Foundation

Mohave
Faith and Grace, Inc.
HAVEN FamilyResource Center
Kingman Aid to Abused People
Child and Family
Advocacy Center
North CountryHealthcare Clinics
Westcare Safe House
Tohdenasshai Committee Against Family Abuse

Navajo
Alice's Place
Eve's Place
Hopi Domestic Violence Program
Navajo County Show Low Family Advocacy Center
North Country Healthcare Clinics
White Mountain Safe House
Tohdenasshai Committee Against Family Abuse

ACESDV LOCAL PROGRAMS CONT'D

Arizona has a statewide network of local domestic violence programs that are ready to help. Arizonasurvivors.org for more information.

AZ COALITION TO END SEXUAL AND DOMESTIC VIOLENCE

Pima
Emerge! Center Against Domestic Abuse
Hands of a Friend – Genesis House
Southern Arizona AIDS Foundation (SAAF) Anti-Violence Project
Southern Arizona Center Against Sexual Assault
Southern Arizona Children's Advocacy Center (children only)

Pinal
Against Abuse, Inc.
City of Maricopa Family Advocacy Center
Community Alliance Against Family Abuse (CAAFA)
La Frontera EMPACT
On Eagle's Wings – Gila River
Pinal County Attorney Family Advocacy Center

Santa Cruz
Domestic Violence Advocacy Program
Nuestra Casa – Our House

Yavapai
Stepping Stones
Verde Valley Sanctuary
Yavapai Family Advocacy Center

Yuma
Amberly's Place
Safe House Shelter

Visit Arizonasurvivors.org to find local programs by location and services offered.

The 24-Hr National Domestic Violence Hotline **(800) 799-SAFE (7233) or (800) 787-3224 (TTY)**

24-Hr National Sexual Assault Hotline
(800) 656-HOPE (4673)

The Arizona Sexual and Domestic Violence Helpline
Available Monday – Friday, 8:30a – 5:00p with extended hours on Tuesday 8:30a – 7:00p
(602) 279-2980 | (800) 782-6400 | Arizona Relay Service 7-1-1 | SMS Text: (520) 720-3383

National Human Trafficking Resource Center Hotline
(888) 373-7888 or text BeFree (233733)

IN THE SUPREME COURT OF THE STATE OF ARIZONA
ADMINISTRATIVE OFFICE OF THE COURTS

In the Matter of:	)	
	)	Administrative Directive
MODIFICATION OF	)	No. 2022 - 05
PROTECTIVE ORDER FORMS	)	(affecting Administrative Directive
	)	Nos. 2019-10 and 2021-16)

The Arizona Code of Judicial Administration (ACJA) § 5-207 authorizes the Administrative Director of the Administrative Office of the Courts (AOC) to approve or modify protective order forms in response to changes in state or federal laws or procedures and make other necessary administrative amendments or corrections.

House Bill 2604, signed by the Governor on April 22, 2022, amended A.R.S. § 13-3602(N) Under this provision, any Order of Protection served on or after September 24, 2022, will be in effect for two years from the date of service. Senate Bill 1653, signed by the Governor on June 7, 2022, amended A.R.S. § 12-1809(T) by revising the definition of "harassment" for purposes of an Injunction Against Harassment.

Therefore, in order to implement changes in court forms required by the amendment of A.R.S. § 13-3602(N) and A.R.S. § 12-1809(T),

IT IS DIRECTED that, effective June 27, 2022, the Order of Protection form, as approved by Administrative Directive No. 2019-10, shall be replaced by the version illustrated in Appendix A of this directive, and

IT IS DIRECTED that, effective June 27, 2022, the Plaintiff's Guide Sheet and the Defendant's Guide Sheet, as approved by Administrative Directive No. 2021-16, shall be replaced by the versions illustrated in Appendix B of this directive, and

IT IS FURTHER DIRECTED that all Arizona courts may begin using the versions of the Order of Protection, the Plaintiff's Guide Sheet, and the Defendant's Guide Sheet specified by this administrative directive immediately but must implement no later than July 22, 2022.

Dated this 27th day of June, 2022.

DAVID K. BYERS
Administrative Director of the Courts

IN THE SUPREME COURT OF THE STATE OF ARIZONA
ADMINISTRATIVE OFFICE OF THE COURTS

In the Matter of:	)	
	)	
PROTECTIVE ORDER FORM	)	Administrative Directive
	)	No. 2021 - 19
	)	
	)	
	)	

The Arizona Code of Judicial Administration (ACJA) § 5-207 authorizes the Administrative Director of the Administrative Office of the Courts (AOC) to approve or modify protective order forms in response to changes in state or federal laws or procedures and make other necessary administrative amendments or corrections.

The Arizona Supreme Court recently adopted an amendment to Rule 38, Rules of Protective Order Procedure. The rule will allow a plaintiff to a protective order to file an amended petition at a contested hearing. The rule further requires the court to make a form available for this purpose.

Therefore, to implement the requirements of amended Rule 38, Rules of Protective Order Procedure,

IT IS DIRECTED that, effective January 1, 2022, all Arizona courts shall implement the Supplement to Petition form as provided by this administrative directive.

Dated this 15th day of November, 2021.

DAVID K. BYERS
Administrative Director

All Courts in Arizona/NCIC#/DPS#	Address	City, AZ Zip Code	Telephone No.
Plaintiff v. Defendant	Case No.	**SUPPLEMENT TO PETITION** **(Rule 38(d), ARPOP)**	

Rule 38(d), Rules of Protective Order Procedure, allows a plaintiff to file an amended petition at a contested hearing. If you file an amended petition and add more allegations here, the judge must allow the defendant an opportunity to ask for the hearing to be continued to another day or grant a brief recess so the defendant can review and prepare for these additional allegations. The defendant may also choose to waive a continuance or a recess, and the contested hearing will proceed as scheduled.

Tell the judge additional information that you did not include on your original petition. Any events you add must have occurred before you applied for the protective order. Print both the dates and a brief description of what happened.

Approx. Date	(Do not write on back or in the margin. Attach additional paper if necessary.)

Under penalty of perjury, I swear or affirm that the above statements are true to the best of my knowledge. I request an order or an injunction granting relief as allowed by law.

Plaintiff Date

Attest:

Judicial Officer/Clerk Date

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In re the Marriage of: CIARA NICOLE JONES-WRIGHT, Petitioner/Appellant, v. JARED BOYLE WRIGHT, Respondent/Appellee.

No. 1 CA-CV 22-0479 FC

Court of Appeals of Arizona, First Division

April 20, 2023

Not for Publication - Rule 111(c), Rules of the Arizona Supreme Court

Appeal from the Superior Court in Maricopa County No. FC2021-004221 The Honorable Tracey Westerhausen, Judge

Cosmas Onyia PC, Phoenix By Cosmas Onyia Counsel for Petitioner/Appellant

Law Offices of Kevin Jensen PLLC, Mesa By Kevin Jensen Counsel for Respondent/Appellee

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Presiding Judge Paul J. McMurdie delivered the Court's decision, in which Judge Michael J. Brown and Judge Michael S. Catlett joined.

MEMORANDUM DECISION

MCMURDIE, JUDGE

¶1 Ciara Jones-Wright ("Mother") appeals from the superior court's dissolution decree ("Decree"). We affirm as to legal decision-making and parenting time, vacate and remand as to child support, and decline to award Mother her attorney's fees.

FACTS AND PROCEDURAL BACKGROUND

¶2 Mother and Jared Wright ("Father") married in June 2019 and had a child the next year. In June 2021, Father was arrested for committing domestic violence against Mother. Mother obtained an order of protection based on this incident, which Father did not contest. Father later pled guilty to aggravated assault and was placed on probation.

¶3 Mother filed to dissolve the marriage in July 2021. Following a trial, the superior court entered the Decree in June 2022. The court found Father had committed domestic violence against Mother but concluded his conduct was not "significant domestic violence" under A.R.S. § 25-403.03(A). It also found Father had rebutted the statutory presumptions against joint legal decision-making under A.R.S. §§ 25-403.03(D) and -403.04(B). The court awarded the parties joint legal decision-making authority and equal parenting time on a week-on, week-off basis. It also granted Mother's request to relocate with the child to New Mexico. As for child support, it found that Mother would owe only an insignificant amount of child support to Father under the Arizona Child Support Guidelines and deviated to zero. *See* A.R.S. § 25-320 app. ("Guidelines").

¶4 Mother timely appealed the Decree. We reviewed the record and determined the Decree contained contradictory relocation orders. We stayed Mother's appeal and provided her with time to move to clarify the orders. The court corrected its relocation orders, and we lifted the stay. We have jurisdiction under A.R.S. § 12-2101(A)(1).

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DISCUSSION

¶5 Mother challenges the joint legal decision-making, equal parenting time, and child support rulings. *We* review the superior court's legal decision-making, parenting time, and child support orders for an abuse of discretion. *DeLuna v. Petitto*, 247 Ariz. 420, 423, ¶ 9 (App. 2019); *Birnstihl v. Birnstihl*, 243 Ariz. 588, 590, ¶ 8 (App. 2018). A court abuses its discretion when it "commits an error of law in reaching a discretionary decision or when the record does

not support" its decision. *DeLuna*, 247 Ariz. at 423, ¶ 9. We will affirm the order if it is supported by competent record evidence. *Smith v. Smith*, 253 Ariz. 43, 45, ¶ 9 (App. 2022). We do not reweigh conflicting evidence or second-guess the court's credibility assessments. *Lehn v. Al-Thanayyan*, 246 Ariz. 277, 284, ¶ 20 (App. 2019).

A. The Court Did Not Abuse Its Discretion by Awarding Joint Legal Decision-Making.

1. The Court Did Not Abuse Its Discretion by Finding Father Did Not Commit Significant Domestic Violence or Have a Significant History of Domestic Violence.

¶6 To determine legal decision-making, the superior court considers the best-interests factors under A.R.S. § 25-403(A), including whether there has been domestic violence or child abuse under A.R.S. § 25-403.03. The court must not award joint legal decision-making if it finds either "significant domestic violence" under A.R.S. § 13-3601 or if it "finds by a preponderance of the evidence that there has been a significant history of domestic violence." A.R.S. § 25-403.03(A).

¶7 Citing the superior court's finding that Father committed domestic violence against her, Mother contends it "erroneously concluded that the domestic violence was not significant."

¶8 The court's order, however, reflects its consideration of all the § 25-403.03(C) factors. The court then turned to A.R.S. § 25-403.03(A). It determined that "though the Court by no means condones the actions found in this case, those acts in the spectrum of domestic violence do not constitute significant [domestic violence] as contemplated by [the] statute." The court also considered three more factors in reaching its conclusion: "(1) [t]he seriousness of the particular incident of domestic violence, (2) the frequency or pervasiveness of the domestic violence, (3) and the passage of time and its impact." Although not a part of any applicable statute or rule, these factors have been applied in similar cases. *See DeLuna*, 247 Ariz. at 424, ¶ 15, n.6.

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¶9 Mother argues the superior court's "conclusion was not supported by any evidence in the record or presented by Father at trial." We disagree. Mother testified she had not seen Father since his arrest a year earlier, and she felt safe enough to communicate with him by email. Father testified he was compliant with his probation and had completed anger management and substance abuse classes. The court found that he had completed 27 of 52 domestic violence classes and that although "[s]ome kind of [substance] abuse was going on to cause the [domestic violence]. Father provided evidence that he turned to sober living, . . . tested clean for drugs and never refused a drug test." We will not reweigh the evidence on appeal, *Lehn*, 246 Ariz. at 284, ¶ 20, and the record contains sufficient evidence to support the superior court's findings on this issue.

2. The Court Did Not Abuse Its Discretion by Finding Father Rebutted the Presumption Against Joint Legal Decision-Making.

¶10 If a court finds a parent has committed domestic violence, the law imposes "a rebuttable presumption that an award of sole or joint legal decision-making to the parent who committed the act of domestic violence is contrary to the child's best interests." A.R.S. § 25-403.03(D). The superior court found that Father rebutted this presumption, but Mother again contends the court's ruling lacks evidentiary support.

¶11 The court must consider six factors in determining whether a party has rebutted the presumption. A.R.S. § 25-403.03(E). Here, the superior court made written findings on those six factors and found that Father rebutted the presumption. The record supports those findings. Mother admitted she did not question Father's parenting skills or ability to care for the child. She also testified that he did not pose a risk of harm to

the child and was a good father both before and after the domestic violence incident. And both parties testified that, despite some issues, they generally could communicate by email about co-parenting. Mother also proposed Father have week-on, week-off parenting time during the summers if the court permitted her to relocate to New Mexico. On this record, we see no abuse of discretion.

3. The Court Did Not Abuse Its Discretion by Finding Father Rebutted the Presumption Against Parenting Time.

¶12 If the court finds a parent has committed domestic violence, the offending parent bears the burden to show "that parenting time will not endanger the child or significantly impair the child's emotional development." A.R.S. § 25-403.03(F). If this burden is met, "the court shall

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place conditions on parenting time that best protect the child and the other parent from further harm." *Id.*

¶13 Mother contends the superior court failed "to consider the factors outlined under A.R.S. § 25-403.03(F)." Relying on *DeLuna*, she also argues the court did not "explicitly determine whether Father had affirmatively shown that parenting time will not endanger the child or significantly impair the child's emotional development." *See DeLuna*, 247 Ariz. at 425, ¶ 18 (internal citations omitted).

¶14 The record shows the superior court considered whether Father met his burden under A.R.S. § 25-403.03(F), and, in doing so, the court placed appropriate conditions on his parenting time. The Decree shows that the court considered and made specific findings about each best-interests factor in A.R.S. § 25-403(A). The court explained that when it considered whether there was domestic violence under A.R.S. § 25-403.03(C), it did so both in the context of legal decision-making and parenting time. After its A.R.S. § 25-403.03(E) analysis, the court cited A.R.S. § 25-403.03(F) and imposed on Father's parenting time "any conditions that the Court imposes in the criminal case." *See* A.R.S. § 25-403.03(F)(9). The court determined that the parenting plan was "practical and also maximizes each parent's parenting time to the extent it is in the child's best interests." Because the court made these findings and considered these factors, it did not abuse its discretion.

B. The Court Erred When Ruling on Child Support.

¶15 Mother challenges the superior court's child support order on three grounds: (1) Father's income, (2) Father's adjustment for the support of a child from another relationship, and (3) Father's adjustment for the child's medical insurance premiums. We agree that the court erred when computing child support and remand for a redetermination.

1. The Court Erroneously Used the Wrong Amount for Father's Child Support Income.

¶16 Mother asserts that the superior court erred when it used $6,280 as Father's monthly child support income because it was undisputed at trial that Father's income was $6,820 monthly. Father concedes this was an error.

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2. The Court Erroneously Credited the Wrong Amount to Father for Support of a Child from Another Relationship.

¶17 Mother next argues that the superior court erroneously gave Father a credit of $972 for supporting a child from another relationship. Under the Guidelines, a parent may receive credit for supporting children from another relationship if the parent is (1) the primary residential parent or (2) has essentially equal parenting time. Guidelines § II.B.2.d-e.

¶18 Father acknowledged that a court order requires him to pay $96 monthly for the support of his other child, but he voluntarily pays $150 each month. He also acknowledged that he does not have court-ordered parenting time and is not the primary residential parent of his other child. For this reason, the superior court erred when it credited him with $972.

3. The Court Erred by Crediting Father for Medical Insurance Premiums.

¶19 Mother also contends the superior court erred by crediting Father $150 monthly for the child's medical insurance premiums. Father did not address this argument in his answering brief. But Father testified that he does not pay for the child's medical insurance and that Mother covers it instead. Because no record evidence supports a premium medical credit for Father, we also reverse and remand this issue. *See Nia v. Nia*, 242 Ariz. 419, 422, ¶ 7 (App. 2017).

ATTORNEY'S FEES AND COSTS

¶20 Mother requests her attorney's fees on appeal under A.R.S. § 25-324(A). After considering the parties' financial resources and the reasonableness of their positions, we decline to award attorney's fees. Per A.R.S. § 25-324, we decline to award either party their costs on appeal.

CONCLUSION

¶21 We affirm the superior court's orders about legal decision-making authority and parenting time. We vacate and remand for recalculation of child support consistent with this decision.

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In re the Marriage of Orette Tariz Shayana Morris, fka Orette Mandel, Petitioner/Appellant, and Christopher Mandel, Respondent/Appellee.

No. 2 CA-CV 2022-0083-FC

Court of Appeals of Arizona, Second Division

April 25, 2023

Appeal from the Superior Court in Pima County No. D20201560 The Honorable Cynthia T. Kuhn, Judge

Southern Arizona Legal Aid Inc., Tucson By Christine Trueblood and Kristin Fitzharris Counsel for Petitioner/Appellant

Law Office of Charles Brown PLLC, Phoenix By Charles W. Brown Jr. Counsel for Respondent/Appellee

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Judge Sklar authored the opinion of the Court, in which Vice Chief Judge Staring and Judge O'Neil concurred.

OPINION

SKLAR, JUDGE

¶1 This case requires us to address the statutory framework for legal decision-making and parenting time when one parent has committed domestic violence. The trial court ordered Orette Morris and Christopher Mandel to share joint legal decision-making of their child. We conclude that A.R.S. § 25-403.03(A) precluded it from doing so because the court also found that Mandel had a significant history of domestic violence. We also conclude that the court did not abuse its discretion in increasing Mandel's parenting time as the child reached school age. Finally, we conclude that the court deviated from the child-support guidelines on past care and support without appropriately considering the relevant factors.

FACTUAL AND PROCEDURAL BACKGROUND

¶2 Morris and Mandel have one minor child, K.M., who was born in 2019. Morris filed a petition for dissolution in June 2020, when the parties lived in Arizona. That same month, Mandel filed his own petition for dissolution. The trial court treated that petition as a response to Morris's petition and consolidated the two cases.

¶3 With her petition, Morris filed a motion for emergency temporary orders. She asserted that Mandel had engaged in a significant history of domestic violence against her. She also sought a temporary order allowing her to relocate with K.M. to South Korea for a military deployment.

¶4 The domestic violence allegations arose in part from an incident in 2018 that led to Mandel pleading guilty to criminal charges. Because Mandel attended a diversion program, however, the charges were dismissed. Morris also obtained orders of protection against Mandel in 2019 and 2020. Both orders were affirmed after contested hearings. In addition, Mandel was jailed in 2019 for domestic violence against Morris.

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Morris dismissed the 2019 order before it expired to allow Mandel to be present for K.M.'s birth.

¶5 After a hearing in July 2020, the trial court entered temporary orders granting sole legal decision-making to Morris. The court reasoned that Morris had "shown by a preponderance of the evidence that there ha[d] been a significant history of domestic violence." Therefore, the court concluded that "an award of joint legal decision-making is barred by A.R.S. § 25-403.03(A)." The court also awarded primary parenting time to Morris in South Korea, with Mandel entitled to daily video calls and parenting time in South Korea during Morris's leave.

¶6 Over the next two years, while the dissolution was pending, Morris left the military, returned from South Korea, and moved to Massachusetts. Mandel moved to South Carolina. In May 2022, after a dissolution trial, the trial court issued a detailed ruling that included the parties' divorce decree.

¶7 In the decree, the trial court incorporated its prior finding that Mandel had engaged in a significant history of domestic violence. It also awarded the parties joint legal-decision making. In addition, it entered a parenting plan designating Morris as the primary residential parent, with Mandel having parenting time that would increase once K.M. began kindergarten. Finally, it ordered Mandel to pay child support of $383 per month, and it ordered Morris to pay $2,439 in past care and support.

¶8 Morris appealed. We have jurisdiction under A.R.S. § 12-2101(A)(1).

TRIAL COURT JURISDICTION

¶9 Because Morris, Mandel, and K.M. had left Arizona by the time the trial court entered the decree's legal decision-making and parenting-time orders, we initially address the court's jurisdiction to enter those orders. Neither party addressed this issue in its briefing, but we have an independent obligation to determine whether the court had subject-matter jurisdiction. *See Angel B. v. Vanessa J.*, 234 Ariz. 69, ¶ 5 (App. 2014).

¶10 Cross-jurisdictional legal decision-making and parenting-time issues are governed by Arizona's Uniform Child Custody Jurisdiction and Enforcement Act, A.R.S. §§ 25-1001 to 25-1067 (UCCJEA). Under the UCCJEA, the final orders were a "child custody determination," which is defined as a "permanent, temporary, initial and modification

order, for legal custody, physical custody or visitation with respect to a child." § 25-1002(3)(a). Legal decision-making is synonymous with "legal custody." A.R.S. § 25-401(3).

¶11 Determining whether the trial court had authority to enter the final orders requires us to first address whether it had authority to make an "initial" child custody determination. A court has such authority if Arizona was "the home state of the child on the date of the commencement of the proceeding." § 25-1031(A)(1). Here, when the proceedings commenced, Arizona was K.M.'s home state, as he lived here from his birth in 2019 until the proceedings commenced in June 2020. *See* § 25-1002(7)(a) (defining "home state" as "state in which a child lived with a parent . . . for at least six consecutive months immediately before the commencement of a child custody proceeding"). Thus, the court had jurisdiction to make an initial determination.

¶12 Here, the initial child custody determination came in the temporary orders. *See* § 25-1002(3)(a) (including temporary orders in definition of "child custody determination"), (8) (defining "[i]nitial determination"). As noted, though, the parties and K.M. left Arizona after the trial court made this determination and before trial. However, it does not follow that the court lost jurisdiction. *See* § 25-1031(C) ("Physical presence of or personal jurisdiction over a party or a child is not necessary or sufficient to make a child custody determination."). Rather, a court has jurisdiction to modify its initial determination "if it has jurisdiction to make an initial determination under § 25-1031." § 25-1032(B). As we have explained, the court had such jurisdiction. We therefore conclude that the court had jurisdiction to enter the final orders, and we proceed to the substantive issues.

LEGAL DECISION-MAKING

¶13 Morris first challenges the trial court's award of joint legal decision-making. She argues that once the court found in its temporary orders that Mandel had engaged in a significant history of domestic violence, it lacked the authority to modify that finding in its final orders. But the final orders did not modify that finding. They

incorporated it. We therefore need not address whether the court had the authority to modify the finding. Instead, we must address whether the court had the authority to award joint legal decision-making despite finding in its final orders that Mandel had a significant history of domestic violence.

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¶14 We review the trial court's legal decision-making and parenting-time orders for an abuse of discretion. *Engstrom v. McCarthy*, 243 Ariz. 469, ¶ 4 (App. 2018). An abuse of discretion occurs when the court commits an error of law in reaching a discretionary conclusion or when the record lacks competent evidence to support the decision. *Id.*

¶15 The relationship between domestic violence and legal decision-making is governed primarily by A.R.S. § 25-403.03. When the trial court finds a parent has committed an act of domestic violence against the other parent, subsection (D) creates "a rebuttable presumption that an award of sole or joint legal decision-making to the parent who committed the act of domestic violence is contrary to the child's best interests." § 25-403.03(D). But "[n]otwithstanding subsection D," when the court finds "significant domestic violence" or a "significant history of domestic violence," subsection (A) requires that "joint legal decision-making shall not be awarded." § 25-403.03(A).

¶16 Here, Mandel does not challenge the trial court's finding that Morris had met her burden of establishing a significant history of domestic violence by Mandel. Indeed, the court heard substantial evidence and testimony to support that finding, and it adequately explained the finding in its orders. At that point, no further analysis was needed. Under § 25-403.03(A), the court was precluded from ordering joint legal decision-making.

¶17 Nevertheless, the trial court undertook the analysis that applies when a parent has committed domestic violence that is not "significant," and it found that Mandel had rebutted the presumption against an award of legal decision-making. *See* § 25-403.03(D), (E). But as we have explained, subsection (D)'s rebuttable presumption did not apply.

¶18 Mandel argues that this result is unreasonable. He relies on the trial court's extensive findings that he had rebutted the presumption and that joint legal decision-making was in K.M.'s best interests. He also argues that as a public-policy matter, it is unfair to preclude a parent who has committed significant domestic violence or has a significant history of domestic violence from exercising joint legal decision-making. These arguments are foreclosed by the language of § 25-403.03(A). *See JH2K I LLC v. Ariz. Dep't of Health Servs.*, 246 Ariz. 307, ¶ 9 (App. 2019) ("When the statute is clear and unambiguous, we must apply its terms without further analysis."). We therefore vacate the award of joint legal decision-making and remand for the court to award sole legal decision-making to Morris.

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PARENTING TIME

¶19 We turn next to parenting time. The trial court ordered that until K.M. began kindergarten, Mandel would exercise parenting time for two continuous weeks at the end of each calendar quarter. Once kindergarten began, Mandel's parenting time would increase to eight weeks in the summer, plus half of Christmas break and one week at spring break. In addition, the court allowed him up to one week of parenting time per month in Morris's state of residence.

¶20 Morris argues that this arrangement improperly increased Mandel's parenting time once K.M. started kindergarten. As with legal decision-making, we review parenting-time orders for an abuse of discretion and treat a legal error as such an abuse. *Engstrom*, 243 Ariz. 469, ¶ 4.

¶21 Morris's argument is premised in part on Mandel's history of domestic violence. Unlike with legal decision-making, our statutory scheme does not prohibit parenting time for a parent who has engaged in "significant domestic violence" or a "significant history of domestic violence." Rather, parents who have committed domestic violence- "significant" or otherwise-must "prov[e] to the court's satisfaction that parenting time will not endanger the child or significantly impair the child's emotional development." § 25-403.03(F).

¶22 If the parent does so, the trial court "shall place conditions on parenting time that best protect the child and the other parent from harm." *Id.* The statute does not specify the conditions, but it provides that the court "may" issue certain orders, such as: (1) requiring exchanges to occur in protected settings; (2) requiring the perpetrator to complete an intervention program; (3) prohibiting the perpetrator from consuming drugs or alcohol during parenting time; or (4) "impos[ing] any other condition that the court determines is necessary to protect the child, the other parent and any other family or household member." *Id.*

¶23 As with all parenting-time decisions, the trial court must also conduct a best-interests analysis under A.R.S. § 25-403. The existence of domestic violence and child abuse is one of that statute's eleven enumerated factors. *See* § 25-403(A)(8). It is also potentially relevant to other enumerated factors. *See, e.g.*, § 25-403(A)(1) ("past, present and potential future relationship between the parent and the child"), (A)(5) ("mental and physical health of all individuals involved"). For all those

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factors, courts must make specific findings on the record. *Hart v. Hart*, 220 Ariz. 183, ¶ 9 (App. 2009). The court must also consider domestic violence as contrary to the child's best interests, and it must consider the child and victim's safety to be "of primary importance." § 25-403.03(B).

¶24 Here, the trial court engaged in a detailed analysis of K.M.'s best interests. It made findings under § 25-403 that addressed Mandel's history of domestic violence. Although the court gave weight to that history, it also found that Morris had withheld parenting time from Mandel and misled the court about K.M.'s whereabouts. In addition, the court found that K.M. had good relationships with both parents. Those findings are supported by the record, and we find no abuse of discretion.

¶25 The trial court sufficiently addressed subsection (F), despite Morris's suggestion to the contrary. Although the court did not expressly say so, it necessarily found that Mandel proved parenting time would not endanger K.M. or significantly impair his emotional development. The court noted that the parties had agreed Mandel could exercise unsupervised parenting time, the domestic violence had occurred years earlier, and K.M. was physically and mentally healthy. In addition, Morris proposed a parenting plan that allowed Mandel to exercise parenting time.

¶26 The trial court also addressed the conditions that may be imposed under § 25-403.03(F). First, it found that Mandel had completed a batterer's prevention program, which is one such condition. It also limited communication during exchanges to further protect the parties. *See* § 25-403.03(F)(1) (allowing court to order that exchanges occur in protected setting), (F)(9) (allowing court to impose other necessary conditions). Expressly citing subsection (F) in this analysis would have been a better practice. But because the court substantively addressed it, doing so implicitly was sufficient.

¶27 Nor do we find an abuse of discretion in the trial court's parenting-time orders. The court reasonably recognized that as children enter school, parenting-time arrangements must account for school schedules. The two-weeks-per-quarter arrangement for K.M.'s pre-kindergarten years would not work with most school calendars. As a result, the court crafted a schedule that

would comply. Morris has also pointed to no authority that precludes a court from gradually increasing a parent's parenting time. Rather, the increase comports with the public policy that absent evidence to the contrary, it is in a child's best interests to have "substantial, frequent, meaningful and continuing parenting time

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with both parents." A.R.S. § 25-103(B)(1). We therefore affirm the parenting-time orders.

CHILD SUPPORT

¶28 In calculating past care and support, the trial court treated the parties as if they had equal parenting time through March 2022, although Mandel had exercised little time. The court reasoned that it was "appropriate to attribute equal parenting time based on Father's inability to exercise parenting time with the minor child internationally, or without a tremendous financial burden." Morris challenges this conclusion.

¶29 Child-support awards are within the trial court's discretion, and we review them only for an abuse of that discretion. *State ex rel. Dep't of Econ. Sec. v. Ayala*, 185 Ariz. 314, 316 (App. 1996). As with legal decision-making and parenting time, a legal error in reaching a discretionary conclusion is an abuse of discretion. *In re Marriage of Robinson &Thiel*, 201 Ariz. 328, ¶ 5 (App. 2001).

¶30 Application of the child-support guidelines is mandatory. A.R.S. § 25-320(D) ("The amount resulting from the application of the[] guidelines is the amount of child support ordered ...."). Under the guidelines, trial courts must calculate parenting time based on either a "court order, a parenting plan, by the parents' expectation, or by historical practice." A.R.S. § 25-320 app. § V(C).

¶31 In certain circumstances, however, the trial court "must deviate" from the child-support guidelines. Before ordering a deviation, the court must "consider[] all relevant factors." § 25-320 app. § IX(B). These factors include those set forth in § 25-320 and applicable case law. *Id.* The court must: (1) conclude that applying the guidelines is inappropriate or unjust; (2) consider the child's best interests; (3) make written findings why application of the guidelines is inappropriate and unjust, as well as why a deviation is in the child's best interests; (4) show in its order the amount of the award without a deviation; and (5) show in its order the amount after deviating. *Id.*

¶32 Here, we agree with Morris that, in the past-care-and-support ruling, the trial court did not calculate parenting time based on "court order, a parenting plan, by the parents' expectation, or by historical practice," as required by § 25-320 app. § V(C). It instead considered a different factor, namely, Mandel's inability to exercise parenting time given

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the distance between the parties. The court erred in calculating parenting time in this manner, as it is unsupported by the statute or guidelines.

¶33 Of course, the trial court was authorized to deviate from the guidelines. That was arguably the effect of its decision. In fact, the child-support guidelines provide that a deviation may be warranted where the parenting plan "will require a parent to incur significant travel expenses related to parenting time and the cost thereof in combination with child support may impede the parent's ability to exercise parenting time." § 25-320 app. § IX(D)(4). The court concluded, however, that "[n]o evidence was presented to support a deviation." It also did not follow the procedure for a deviation, which includes making findings and incorporating child-support worksheets showing the deviation. Accordingly, the decision constituted a legal error.

¶34 We therefore vacate the trial court's decision on past care and support and remand for additional proceedings consistent with this decision. In its discretion, the court may order a deviation from the child-support guidelines if it

follows the required procedures and considers the required factors.

ATTORNEY FEES AND COSTS ON APPEAL

¶35 Mandel requests an award of attorney fees and costs on appeal under Rule 21, Ariz. R. Civ. App. P., and A.R.S. § 25-324. Section 25-324 allows a court to award a party reasonable attorney fees "after considering the financial resources of both parties and the reasonableness of the positions each party has taken throughout the proceedings." Having reviewed the record as to the financial resources of both parties and considered the reasonableness of the parties' positions, we deny Mandel's request for attorney fees in our discretion. *See Doherty v. Leon*, 249 Ariz. 515, ¶ 24 (App. 2020).

¶36 Mandel is also not the prevailing party on appeal, as Morris prevailed on more issues. Mandel is therefore not entitled to his costs on appeal. *See id.* Although Morris did not request fees on appeal, we conclude that she is the prevailing party, so she is entitled to her costs upon compliance with Rule 21(b). *See id.*

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DISPOSITION

¶37 We reverse the trial court's decision to award the parties joint legal decision-making, and we vacate the decision on past care and support. We remand with directions that the court enter a new decree that awards sole legal decision-making to Morris and addresses past care and support in a manner consistent with this opinion. We otherwise affirm.

Instructions for Submitting Exhibits for Protective Orders Hearings

Parties and witnesses must appear at the location specified on the hearing notice at least 15 minutes prior to the scheduled hearing. **If you do not appear timely, the court may reduce your presentation hearing time**

If you intend to use documents, printed texts, email messages, photos, recordings, video or other types of evidence, the following instructions apply. **Failure to follow these instructions may mean that the court is unable to consider your evidence. Your hearing time may be cut short if exhibits are not submitted timely as explained below.**

- **Electronic Exhibit Submission**: All documents and photos you would like to have considered during the hearing should be uploaded to the Clerk of Court Exhibit Portal **at least 24 hours prior to your hearing** at:

https://www.clerkofcourt.maricopa.gov/services/exhibits-submission

  - It is important to follow all instructions on the website.
  - Upload only ***one set*** of exhibits.
  - If you have questions regarding uploading exhibits, send your question to this email:
    - **COCExhibitQuestions@maricopa.gov**
  - On the day of the hearing, you must bring an extra copy of each exhibit for the other party.

- **Paper Exhibit Submission**: If you are unable to upload your exhibit(s), they may be presented to the assigned division.
  - Individual exhibits must be separated by Exhibit Slip Sheet (sample attached).

- Also, an Exhibits Coversheet must be completed and placed on top of the exhibits.
- To assist in specific identification all documents and photographs should be page numbered [or Bates stamped].
- On the day of the hearing, bring two sets of exhibits, one for the opposing party and one for your reference.
- Court staff are not allowed to make copies of exhibits.

- **Audio/Video and Other Media**: Audio, video, or other media-type exhibits cannot be uploaded to the exhibit portal.
  - Media-type exhibits must be uploaded onto a USB/Flash drive containing only exhibit(s) you want to give the court.
  - The USB/Flash drive must be delivered to the assigned division.
  - Two additional USB drives must be provided prior to the hearing, one for the Court and one for the other party.
  - If the USB drive is received in evidence during the hearing, it will not be returned.
  - Pictures, audio files or video recordings displayed or played from a cell phone or other electronic device without providing a USB drive are not allowed.

Exhibits Coversheet

Drop off Date: _____

Hearing Date: _____

Judge/Commissioner: _____

Case Number: _____

Petitioner/Plaintiff: _____

Respondent/Defendant: _____

These exhibits are for:

☐ Petitioner/Plaintiff

☐ Respondent/Defendant

EXHIBIT [redacted]

LRD: 1/4/2022

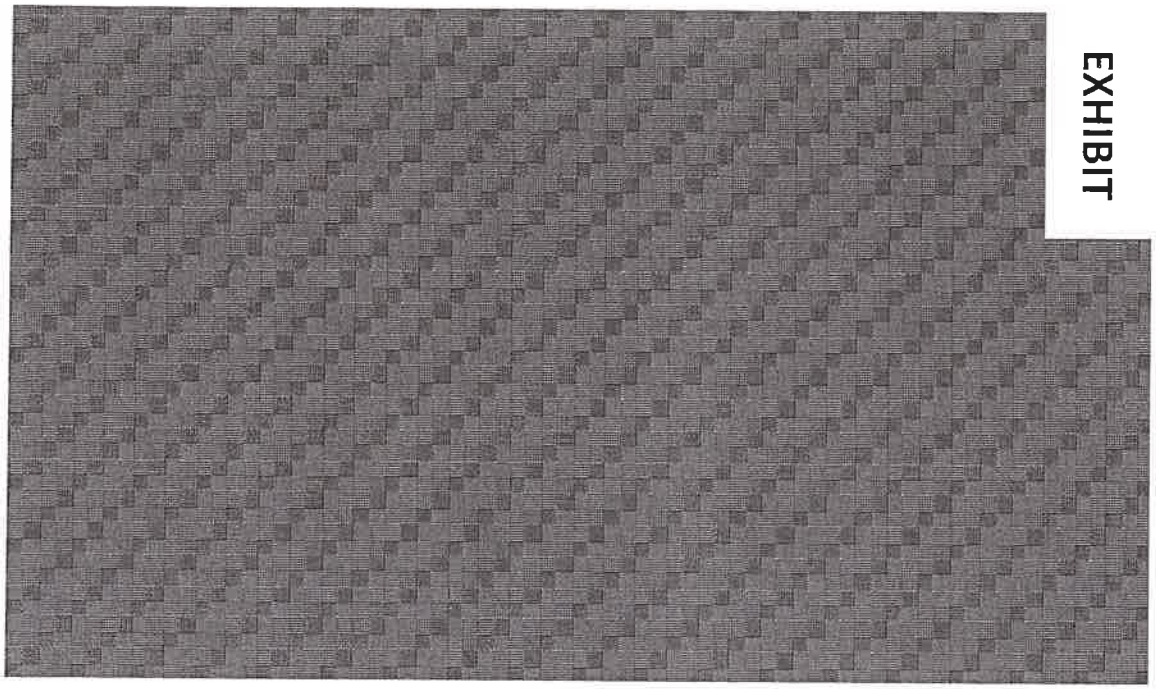
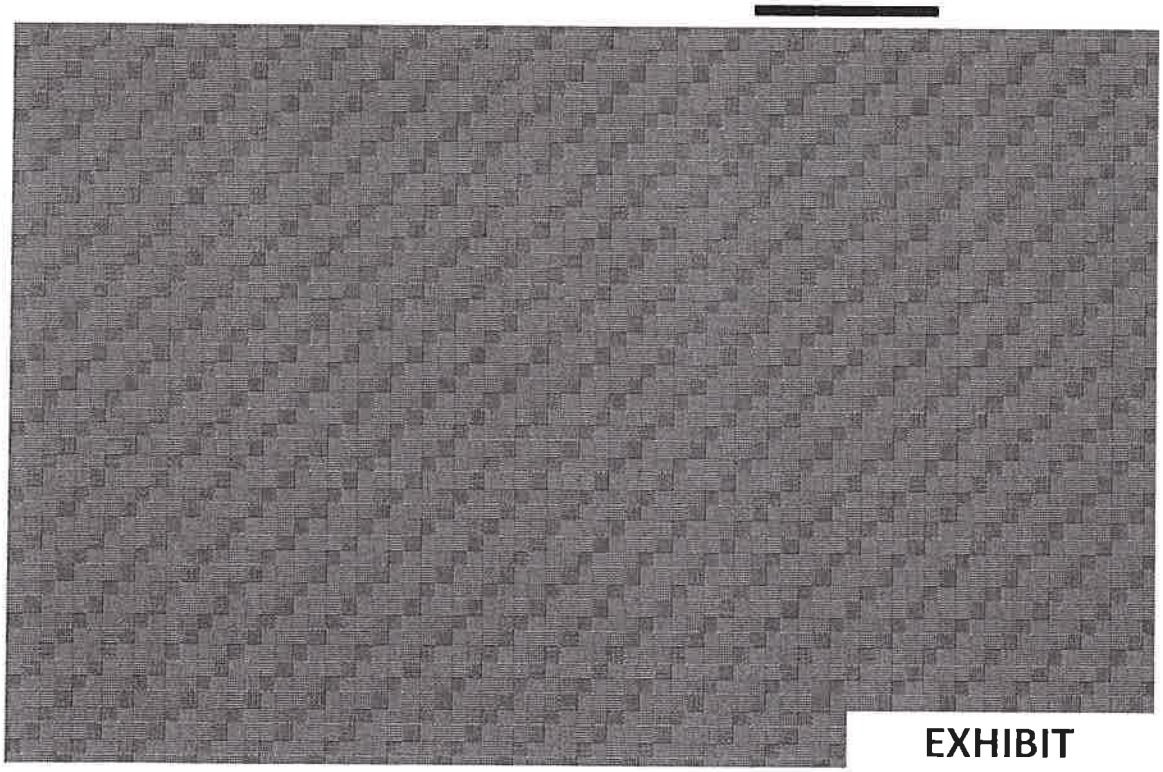


EXHIBIT # ____



TWO WORLDS COLLIDE

Family and Criminal Law

1

AZ VICTIM'S BILL OF RIGHTS ARTICLE 2 SECTION 2.1

- Section 2.1. (A) To preserve and protect victims' rights to justice and due process, a victim of crime has a right:
- 1. To be treated with fairness, respect, and dignity, and to be free from intimidation, harassment, or abuse, throughout the criminal justice process.
- 2. To be informed, upon request, when the accused or convicted person is released from custody or has escaped.
- 3. To be present at and, upon request, to be informed of all criminal proceedings where the defendant has the right to be present.
- 4. To be heard at any proceeding involving a post-arrest release decision, a negotiated plea, and sentencing.
- 5. To refuse an interview, deposition, or other discovery request by the defendant, the defendant's attorney, or other person acting on behalf of the defendant.

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AZ VICTIM'S BILL OF RIGHTS ARTICLE 2 SECTION 2.1

- 6. To confer with the prosecution, after the crime against the victim has been charged, before trial or before any disposition of the case and to be informed of the disposition.
- 7. To read pre-sentence reports relating to the crime against the victim when they are available to the defendant.
- 8. To receive prompt restitution from the person or persons convicted of the criminal conduct that caused the victim's loss or injury.
- 9. To be heard at any proceeding when any post-conviction release from confinement is being considered.
- 10. To a speedy trial or disposition and prompt and final conclusion of the case after the conviction and sentence.

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AZ VICTIM'S BILL OF RIGHTS ARTICLE 2 SECTION 2.1

- 11. To have all rules governing criminal procedure and the admissibility of evidence in all criminal proceedings protect victims' rights and to have these rules be subject to amendment or repeal by the legislature to ensure the protection of these rights.
- 12. To be informed of victims' constitutional rights.
- (B) A victim's exercise of any right granted by this section shall not be grounds for dismissing any criminal proceeding or setting aside any conviction or sentence.
- (C) "Victim" means a person against whom the criminal offense has been committed or, if the person is killed or incapacitated, the person's spouse, parent, child or other lawful representative, except if the person is in custody for an offense or is the accused.
- (D) The legislature, or the people by initiative or referendum, have the authority to enact substantive and procedural laws to define, implement, preserve and protect the rights guaranteed to victims by this section, including the authority to extend any of these rights to juvenile proceedings.
- (E) The enumeration in the constitution of certain rights for victims shall not be construed to deny or disparage others granted by the legislature or retained by victims.

4

ORDER OF PROTECTIONS AND VBR

- USING TESTIMONY TO "INTERVIEW" VICTIM
  - "Preserving crime victims' right to refuse to be deposed in any venue regarding the offense committed against them is necessary to promote the purpose of the VBR. The purpose underlying a victim's right to refuse a pretrial interview is to protect the victim's privacy and minimize contact with the defendant prior to trial". *State v. Lee*, 226 Ariz. 234, 239, 245 P.3d 919, 924 (Ct. App. 2011)
  - Accordingly, we conclude that the protected party under a domestic-violence order of protection qualifies as a crime victim under the Victims' Bill of Rights when the person against whom the order of protection was issued is charged with interference with judicial proceedings by violating the order. Therefore, D.S. was entitled to refuse Charles' request for an interview and could not be compelled to submit to a deposition pursuant to Rule 15.3(a)(2). *Douglass v.* State, 219 Ariz. 152, 155, 195 P.3d 189, 192 (Ct. App. 2008)

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LIFETIME NO CONTACT ORDER
§ 13-719. LIFETIME INJUNCTION

- A. At the time of sentencing, on the request of the victim or the prosecutor, the court shall issue an injunction that prohibits the defendant from contacting the victim if the defendant is convicted of any of the following offenses, whether completed or preparatory:
- 1. A dangerous offense as defined in § 13-105 that is a felony.
- 2. A serious offense or violent or aggravated felony as defined in § 13-706.
- 3. A felony offense included in chapter 14 or 35.1 of this title.1

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LIFETIME NO CONTACT ORDER
§ 13-719. LIFETIME INJUNCTION

- B. An injunction issued pursuant to this section is effective immediately and shall be served on the defendant at the time of sentencing.
- C. The court shall provide information to the department of public safety to register the injunction with the national crime information system and shall notify the victim of the injunction.
- D. A victim may submit a petition to the court requesting an injunction against a defendant who was sentenced for an offense listed in subsection A of this section before September 24, 2022. A law enforcement agency shall serve an injunction issued pursuant to this subsection at no charge to the victim.
- E. An injunction that is issued pursuant to this section does not expire and is valid for the defendant's natural lifetime unless any of the following occurs:
- 1. The defendant makes a showing to the court that either:
- (a) The victim has died.
- (b) The conviction has been dismissed, expunged or overturned or the defendant has been pardoned.
- 2. The victim submits a written request to the court for an early expiration. The court may hold a hearing to verify the victim's request to dismiss the injunction.

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WHAT DO LIFETIME INJUNCTIONS MEAN FOR PARENTING TIME

- Creative parenting plan

8

CRIMINAL INVESTIGATION

- Interviewing children
- Child abuse
- Sexual abuse
- Domestic violence crime
- 5th Amendment issues
  - "[T]he trial judge may draw a negative inference from the father's invocation of the Fifth Amendment." *Montoya v. Superior Ct. In & For Cnty. of Maricopa*, 173 Ariz. 129, 131, 840 P.2d 305, 307 (Ct. App. 1992) but once a person testifies they waive their 5th Amm. Right
  - Criminal release orders vs parenting orders

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AZAFCC RESOURCES

- https://www.azafcc.org/uploads/1/2/6/4/126491982/2017-azafcc-summit-project_final.pdf

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SUBSTANCE ABUSE AND MENTAL HEALTH ISSUES THAT IMPACT LEGAL DECISION-MAKING AND PARENTING TIME

By: Dori Eden

Substance Abuse/Misuse

- Most common:
  - Alcohol, Marijuana
  - Illegal drugs (Cocaine, Ecstasy, Meth, etc.)
  - Opioids (often leads to heroin)
- How determine if abuse/misuse impacting legal decision making/parenting time:
  - Order parents not to use alcohol, mind-altering substances during parenting time
  - Hair follicle tests
  - Random UAs
  - SoberLink (Alcohol Use Disorder Bench Card)

- What happens if positive test?
  - Judge suspended parenting time for a period of time, while also ordering parent to use SoberLink & random UAs
  - Resetting the clock
    - Order for Drug Testing

F. Frequency & Duration. Parent shall be randomly tested not less than: Once a Week for 12 Weeks.

G. Positive/Diluted/Missed Test. In the event that Parent tests positive on any test, misses a random test, or provides a diluted test sample on any test, the cycle and frequency of testing set forth in paragraph F above, ***shall be started again with weekly tests****. All parties are advised that the failure, neglect or refusal to participate in testing, or providing a diluted test sample at the time of testing, may be considered an admission by the party that the testing, if properly conducted, would have revealed the use of the substance(s) tested for, which finding is contrary to the best interest of a child.* ***Certain prescription medications may cause a positive drug test***

result. Parties who are required to drug test are expected to provide proof to the court of prescriptions and documentation from health care providers regarding the lawful possession and use of those medications.

Potential Problems:

- OTC cold medication (finding their list of "bad" medications or things to avoid is hard!)
- Prescription medication – Ritalin – test positive for amphetamines
- Averhealth says no, but supplements with added creatinine
- Diluted (maybe just drank too much water)
- Can request a confirmation test – more expensive, but will rule in/out use of alcohol or common bad drugs

Potential and very real likelihood: Recognize relapse is likely!

- Within 30 days of leaving inpatient treatment – 40-60% chance of relapse,
- After 1 year sobriety – 50%-85% chance of relapse,
- After 5 years sober – 7-15% chance of release,

Other considerations:

- May have 2 to 5+ attempts to achieve 1 year sobriety (everyone is different)
- Short term goals & consequences (immediate change to PT, how long? What need to do to resume PT?)
    - Not about punishing parent for relapsing, but keeping child safe

Example agreement (or proposed language for an order)

1. Mother shall be required to test through SoberLink three (3) times per day, with live (real-time) results going to Father. Mother's testing times shall be no later than one (1) hour upon waking, one (1) time in the middle of the day, and one (1) hour before she goes to bed. Any and all expenses associated with

Mother's SoberLink testing, including live results, shall be Mother's sole expense.

2. Mother shall participate in Alcoholics Anonymous or a similar program and provide documentation of her participation. Mother will commit to attending at least one (1) meeting per week.
3. Mother shall not have any parenting time with the children until she has completed seven (7) consecutive days of SoberLink testing, with all tests providing clean/negative test results. Absent good cause, such as machine malfunction, if Mother's testing result indicates positive, missed, non-compliant, unidentified, etc., Mother's 7-day testing period shall start over.
4. Upon the completion of the seven (7) consecutive day testing period, Mother shall exercise supervised parenting time with the children every Wednesday from 5:00 pm to 7:00 pm. PERSON shall be the supervisor and shall be present for the entirety of Mother's parenting time. PERSON shall terminate the scheduled visit between Mother and children if Mother consumes any alcohol or appears to be intoxicated. Mother shall make appropriate arrangements with PERSON for the pick-up and drop-off of the children. Father shall be flexible with the exchange times and will assist with the exchanges of PERSON is unable to facilitate the exchanges.
5. After eight (8) weeks of clean SoberLink tests and consistent participation in a treatment program, Mother shall exercise unsupervised parenting time with the children every other weekend from Friday at 4:00 p.m. until Sunday at 6:30 p.m. Mother shall have the 2nd and 4th weekend of every month. If Mother tests positive or fails to test, then Mother's parenting time is forfeited until she has seven (7) consecutive days of clean tests.
6. In addition to alcohol, Mother shall not use any mind-altering substances, including but not limited to marijuana.

EDUCATE judges – these are signs of use of 'X' & this is how impacts ability to co-parent/parent kids in this particular case

- Ask for additional trial time
- Include information in pretrial statement regarding proposed language, education on relapse likelihood, danger to children when parents together and how children in danger without sober parent
- Brief to the Court with relevant articles or references

How Mental Health Issues Impact Legal Decision Making and Parenting Time

- Children's mental health issues:
    - Mental health in children (how manifest in children, what needs to be done by both parents)
    - Special needs
        - Ex. ADHD/Autism Spectrum/Anxiety/depression/suicidal ideations/self-harming/many others
            - Counseling? What if counseling is not helping
            - Medication? What if a parent is opposed
        - Need a diagnosis?
            - Pediatrician
            - Counselor
            - Psychologist
            - Psychiatrist
            - Neuropsychological evaluation (e.g., ADHD, Anxiety, Depression, Sensory Processing Disorder, Autism, Asperger's, learning disability, dementia, Parkinson's Disease – any neurocognitive disorder or neurodevelopmental delay)
                - Tests identify & measure individual's cognitive, verbal, social, memory & motor skills to identify strengths, weaknesses or deficits.
                - Pros – very helpful in creating plan for child (specific types of counseling, creation of IEP or 504 Plan, games to help develop areas of weakness/deficiencies)
                - Cons – very expensive, one parent may not want to participate and/or follow through on recommendations

- Postpartum depression/depression/anxiety
    - Is it controlled by counseling/medication?
    - Is it recent/relevant?
        - Ex. 1 Youngest child is 6 months and Mom hospitalized for suicidal ideations.
        - Ex. 2 Youngest child is 12 years old, and Mom's depression/anxiety controlled by medication.

        - Ex. 3 Youngest child is 3 and Mom refuses to take prescribed medication because she doesn't like the way it makes her feel.

- Other Common Mental Health Issues
    - Traumatic Brain Injury (TBI)
        - Concussions
        - Fall as an infant/young child
        - Car accident
    - Post-Traumatic Stress Disorder
        - Violent crime survivors
        - Post-war military veterans
    - Complex Post-Traumatic Stress Disorder
        - Long-term, ongoing trauma, sometimes occurring at a young age

Personality disorders
- May be very fixed/rigid in in perception/reactions
- View others as the problem, not themselves
- But when people under significant stress (i.e., dissolution), may display similar behaviors but don't necessarily have personality disorder
    - "I don't even know who s/he is anymore."

- **Cluster A**
    - Odd/eccentric behaviors appear in social and relationship difficulties
    - May be rigid, erratic, extreme actions, unusual responses
    - May be stuck in own perception of realty
    - Former partners may use litigation to limit contact with parent and children.
    - Types:
        - *Paranoid Personality Disorder*:
            - difficulty trusting others,
            - holds grudges for extended periods of time,
            - quick to anger/lashing out at others,
            - hard to get along with
        - *Schizotypal Disorder*:
            - hears voices,
            - hallucinations,

        - believes hidden messages in society, including media & technology,
        - struggle with close relationships,
        - difficulty with eye contact, appear awkward
    - *Schizoid Personality Disorder*:
        - appear cold/unapproachable,
        - others don't want to be around,
        - difficulties interpreting social cues,
        - committed relationships often don't last very long

- **Cluster B**
    - Thought to be types of personality disorders that high conflict, very reactive or overreactive, volatile, behave inappropriately
    - Types:
        - *Borderline Personality Disorder* (BPD):
            - One of most common personality disorders and can be a predictor of divorce
            - Fragile egos
            - Difficulty with emotional regulation/highly reactive emotionally
            - Self-destructive behaviors: addiction or self-harm
            - Scared others will abandon them & then it happens – may react with rage toward person who abandoned
            - all or nothing, good or bad, black/white – no grey areas,
            - thoughts/opinions/likes change – e.g., Dad is fine if Mom is happy with Dad, when angry, Dad is the worst person ever.
            - More common in women than men
        - *Narcissistic:*
            - Often very selfish,
            - lacking empathy, all about how they feel/need/want,
            - focus on getting own needs met & lack awareness others may have different needs, or need power over others (may bully, put down others, seek lots of praise)
            - frustrating to deal with especially when disagreeing
            - difficult to work with in therapy and co-parenting counseling
        - *Anti-social personality disorder:*

        - no regard for needs of others,
        - don't care about safety of self/others. may lie, cheat, steal, highly impulsive, irresponsible, callous,
        - engage in criminal behavior, may reject social & societal norms,
        - manipulative, deceitful, reckless, view others as a tool to get what they want
        - In family law matters – tend to be very abusive to partners
    - *Histrionic personality disorder:*
        - Interpersonal functioning w/ extreme displays of intense emotion
        - Attention seekers
        - Described as seductive, manipulative, charming, impulsive, lively
        - Personality described as erratic, volatile, dramatic
        - Will act out when not getting attention they deserve

- **Cluster C**
    - Types:
        - *Avoidant Personality Disorder*:
            - Terrified of rejection
            - Avoid social gatherings
            - Flock toward previously married individuals or those with prior relationship problems
            - Difficulty resolving problems
        - *Dependent Personality Disorder:*
            - Motivated by fear of having to take care of themselves
            - Depend on others to make decisions or approve their decisions
            - Poor self-esteem
            - Relationship (including friendship) difficulties
            - May be unwilling to do normal activity alone
            - May constantly seek approval/encouragement
            - May avoid disagreements
            - May stay in abusive/unhealthy relationships
            - Jump into a new relationship as soon as one ends

        - *Obsessive Compulsive Disorder*:
            - Takes perfection to extreme level
            - Obsess over rules, cleanliness, patterns
            - Very detail-oriented
            - Appear rigid and inflexible
            - If don't follow all rituals, something bad will happen
            - May be very irritable and demanding in relationships
- *See* Dr. Robert A. Simon's article "*Personality Disorders*" in ABA Family Advocate (Winter 2023 ed), pgs. 6-8.
- *See also* Stephanie Newberg, M.Ed. MSW, LCSW's article "*Understanding How your Client's Personality Disorder Affects your Case"* in ABA Family Advocate (Winter 2023 ed), pgs. 10-12.

<u>Trying a case with a parent with a personality disorder</u>

- If known:
    - label only. Still co-parenting with a person, not a diagnosis
    - Think of co-parent's strengths/weaknesses/deficiencies
    - What worked during relationship when at an impasse
    - Explain (details – dates/times/specific events) how impacts child/co-parenting relationship
    - Avoid generalizations – "he's always so mean."
        - How? When he gets angry, he screams at me, throws things at me, takes the kids and won't let me interact with them (e.g., parent locking another parent out of the house)
        - BPD opposing party
            - kitchen either filthy or spotless
            - dinner – only a few options child allowed to eat
            - other party prepared what parent with BPD liked to eat, that parent was wonderful. If tried to feed child something parent with BPD didn't approve of, worst parent ever.
- If not known:
    - Impact presentation to court or mediator?
    - Still explain in detail how impact child/co-parenting relationship
    - Request psychological or psychiatric evaluation

- Cost & who pays
- Get the label, but then what?
- Parent with true personality disorder manipulating system (projecting) so other person seems to have mental health issue

- Comprehensive Family Evaluation (CFE)
  - Objective Personality Tests (commonly used)
    - MMPI (Minnesota Multiphasic Personality Inventory) (2nd, 3rd Restructured Forms)
    - Limited answers: true/false, yes/no
    - Be aware of testing environment
    - Request actual computer-generated interpretative report (if used)
    - Supposed to create a hypothesis and then consider if there is corroborating evidence to support
    - Subject to interpretation
    - Various versions of MMPI – why was that version chosen?
    - Don't understand results (why are they all guarded?)
      - Spend an hour with a psychologist/psychiatrist
      - Buy him/her lunch
      - Ask questions (but do research first to know what questions to ask!)
  - Projective Personality Tests (not as common anymore)
    - Lack empirical validity and reliability
    - Examples: Rorschach Test, Thematic Apperception Tests (TAT), Sentence Completion Test, Projective drawing tests

- Family Law Attorneys:
  - Research, become familiar with mental health diagnosis or personality traits & explore with client how to demonstrate/explain to judge or mediator
  - Own client?
    - Accusing other parent of having personality disorder?
    - Allegations other parent engaging in physical or sexual abuse against child
      - Talk through potential ramifications (ARS 25-403 factors)

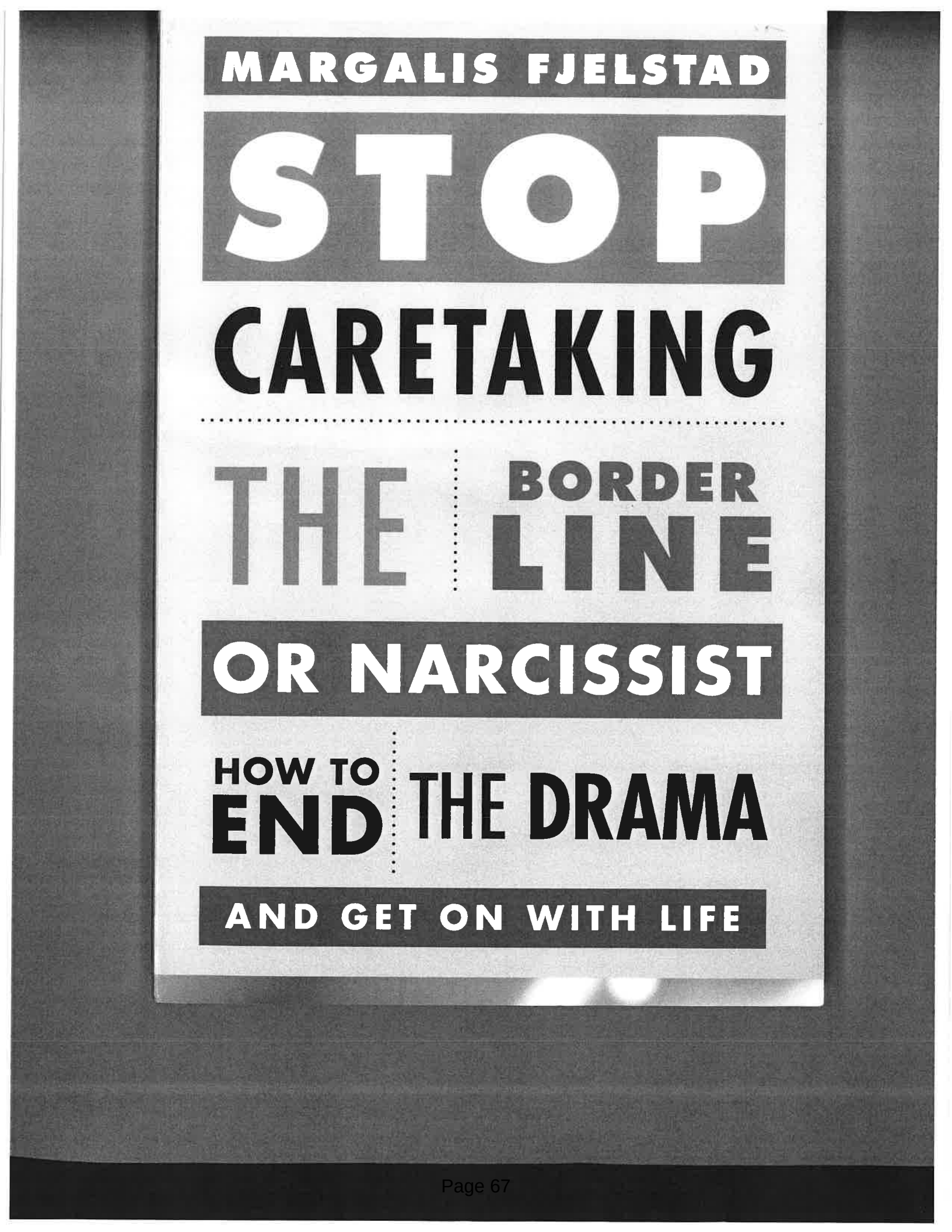
- False allegation of child abuse?
    - Judges are different:
        - Examples:
            - Pinal County – 12 years no overnights, supervised
            - Maricopa County – equal time (“good faith belief”)
    - Psychological evaluation of own client
    - Forensically informed child interview/counselor?
- Proceed with caution when making allegation
    - Uncomfortable with allegation – get out of case

Published on The National Domestic Violence Hotline www.thehotline.org "Power and Control Wheel"

Co-Parenting *with a* Narcissist

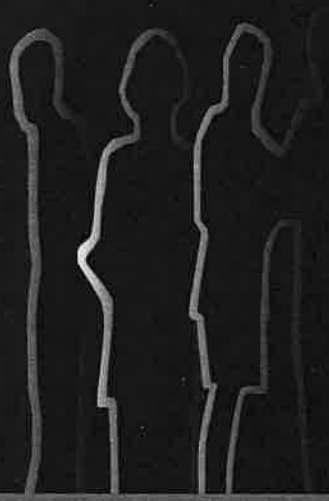
A Guidebook for Targeted Parents

DR. SHARIE STINES, LPCC
PATRICIA HARRIMAN, MFA


MARGALIS FJELSTAD
STOP
CARETAKING
THE BORDER LINE
OR NARCISSIST
HOW TO END THE DRAMA
AND GET ON WITH LIFE

HIGH CONFLICT PEOPLE

in legal disputes



by **Bill Eddy**
LCSW, ESQ.

The legal & psychological advice you need

splitting

Protecting Yourself While **Divorcing** Someone with **Borderline** or **Narcissistic Personality Disorder**

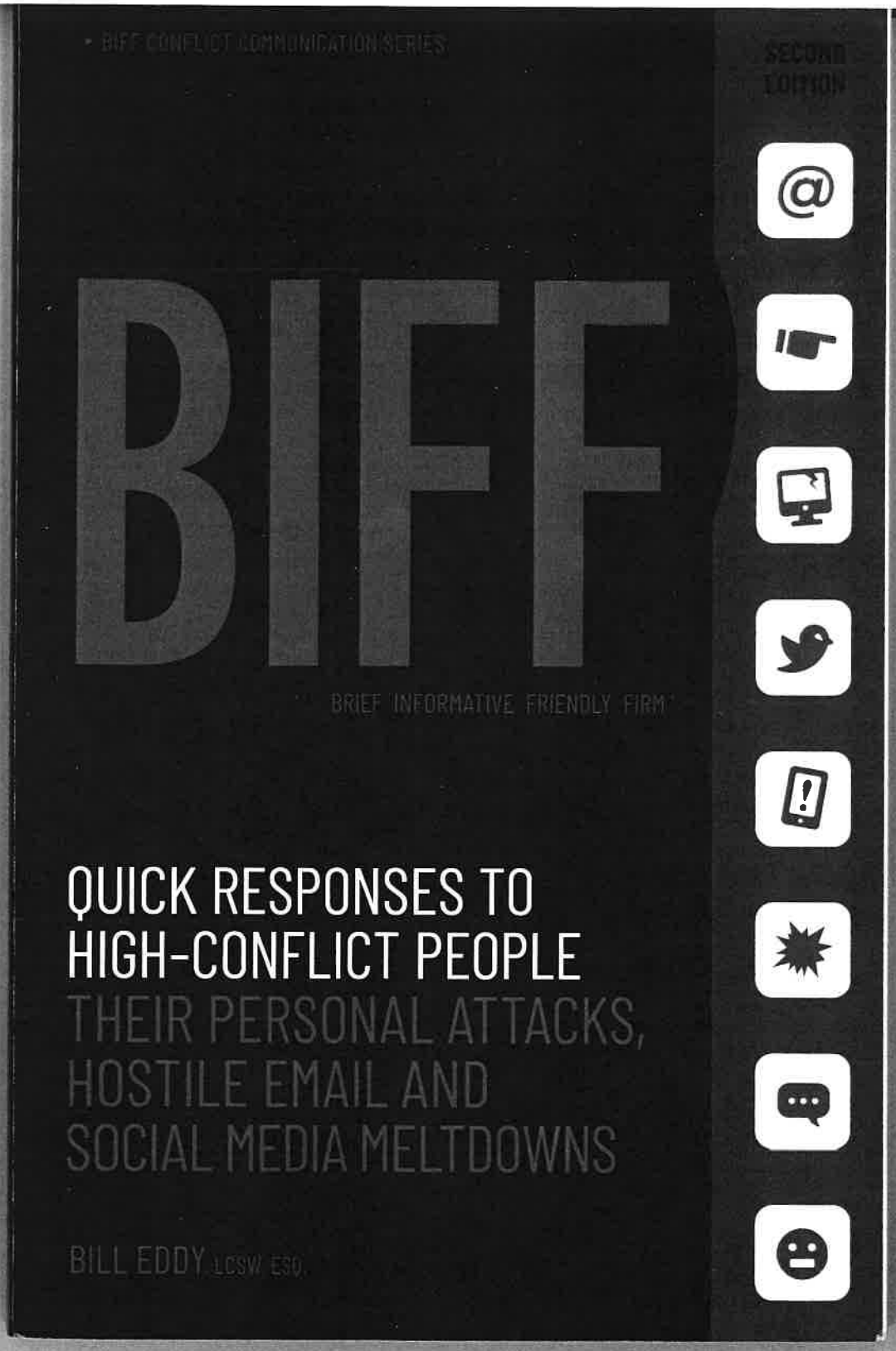
Bill Eddy, LCSW, JD
Attorney, Mediator, and Clinical Social Worker

Randi Kreger
Coauthor of *Stop Walking On Eggshells*

Overcoming the Co-Parenting Trap:

Essential Parenting Skills When a Child Resists a Parent

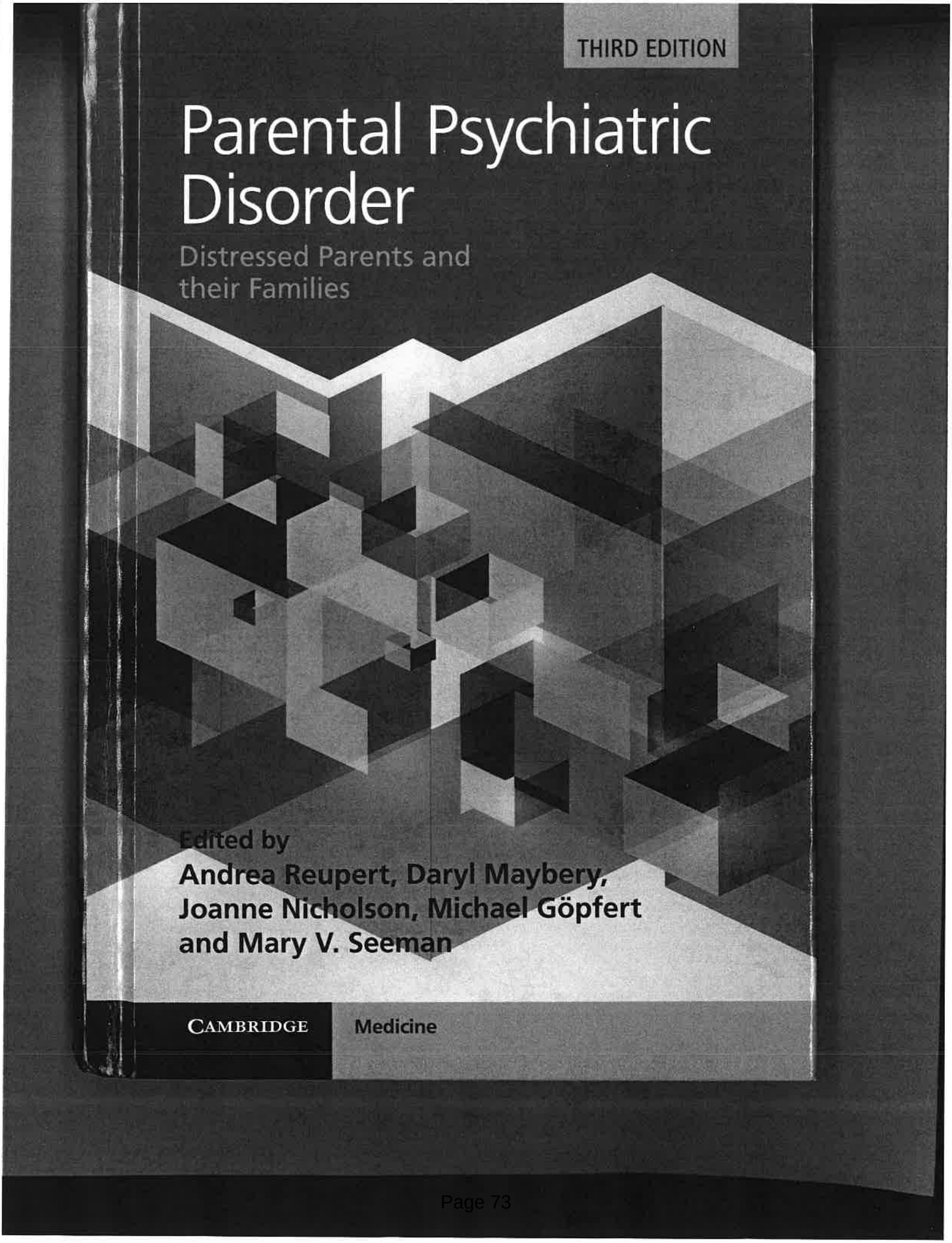
John A. Moran, Ph.D., Tyler Sullivan, & Matthew Sullivan, Ph.D.


BIFF CONFLICT COMMUNICATION SERIES
SECOND EDITION
BIFF
BRIEF INFORMATIVE FRIENDLY FIRM
QUICK RESPONSES TO HIGH-CONFLICT PEOPLE
THEIR PERSONAL ATTACKS, HOSTILE EMAIL AND SOCIAL MEDIA MELTDOWNS
BILL EDDY LCSW ESQ.

Raising Resilient Children

with a Borderline or Narcissistic Parent

MARGALIS FJELSTAD
AND JEAN McBRIDE


THIRD EDITION
Parental Psychiatric Disorder
Distressed Parents and their Families
Edited by
Andrea Reupert, Daryl Maybery, Joanne Nicholson, Michael Göpfert and Mary V. Seeman
CAMBRIDGE
Medicine

THE TWENTIETH
Mental Measurements Yearbook

JANET F. CARLSON, KURT F. GEISINGER,
and JESSICA L. JONSON
EDITORS

Jason Sweetman **Curriculum Vitae**

Jason Sweetman | Business Development Manager | Family Law
SOBERLINK
2021 - Present
Email: JSweetman@Soberlink.com Cell: 714.737.0222 | Office: 714.975.7200 x 237
soberlink.com

Professional Experience

- West-Region Business Development Manager for Soberlink, dedicated to helping and educating Family Law professionals such as Judges, Commissioners, Attorneys, and Mediators.
- Based out of Southern California and serving 20 US States from the West, including Alaska and Hawaii, through the Midwest.
- Provides in-person and virtual meetings to educate, on AUD, how AUD affects Family Law cases, and Soberlink's alcohol monitoring technology and programs, along with best practices for the optimal parenting plan.
- Jason's focus is ensuring child safety and well-being for families involved in alcohol-related divorce cases with information and support.

Family Law Presentations

- 10/15/21 AFCC (Association of Family and Conciliation Courts) Indiana Chapter
  - Attendance: 80 Family Law Judges, Commissioners, Attorneys, Mediators, Guardian Ad Litems.
  - Presentation (15 Minutes): Alcohol Monitoring in Family Law Cases
- 4/26/22 Sacramento County Bar Association Family Law Executive Committee
  - Virtual Attendance: 30 Family Law Judges, and Attorneys
  - Presentation (20 Minutes): Alcohol Monitoring in Family Law Cases
- 5/19/22 SCBA (Stanislaus County Bar Association) Family Law Section
  - Virtual Attendance: 22 Family Law Judges, and Attorneys
  - Presentation (20 Minutes): Alcohol Monitoring in Family Law Cases

- 7/30/22 WSBA (Washington State Bar Association) Family Law Section
  - Virtual Attendance: 125 Family Law Judges, Commissioners, Attorneys, Mediators, Guardian Ad Litems.
  - Presentation (20 Minutes): Alcohol Monitoring in Family Law Cases
- 8/10/22 Superior Court of California County of Orange Family Law Division
  - Virtual Attendance: 1 Family Law Judge
  - Presentation (30 Minutes): Alcohol Monitoring in Family Law Cases
- 9/22/22 AFCC (Association of Family and Conciliation Courts) Wisconsin Chapter
  - Attendance: 75 Family Law Judges, Commissioners, Attorneys, Mediators, Guardian Ad Litems.
  - Presentation (20 Minutes): Alcohol Monitoring in Family Law Cases
- 12/7/22 Superior Court of California County of San Diego Family Law Division
  - Virtual Attendance: 3 Family Law Judges
  - Presentation (30 Minutes): Alcohol Monitoring in Family Law Cases
- 1/17/23 RCBA (Riverside County Bar Association) Family Law Section
  - Attendance: 65 Family Law Judges, Commissioners, Attorneys, Mediators, Guardian Ad Litems.
  - CLE Presentation (60 Minutes): AUD and Alcohol Monitoring in Family Law Cases
- 1/25/23 Arizona State Bar Association Family Law Section
  - Virtual Attendance: 245 Family Law Judges, Commissioners, Attorneys, Mediators, Guardian Ad Litems
  - Presentation (25 Minutes): Alcohol Monitoring in Family Law Cases
- 2/27/23 Washoe County Court / Nevada State Bar Association Family Law Section
  - Virtual Attendance: 35 Family Law Judges, Commissioners, Attorneys, Mediators, Guardian Ad Litems.
  - Presentation (60 Minutes): AUD and Alcohol Monitoring in Family Law Cases
- 2/16/23 SBCBA (San Bernardino County Bar) Family Law Section
  - Attendance: 65 Family Law Judges, Commissioners, Attorneys, Mediators, Guardian Ad Litems.
  - Presentation (20 Minutes): Alcohol Monitoring in Family Law Cases
- 3/2/23 Nevada State Bar Family Law Section
  - Attendance: 225 Family Law Judges, Commissioners, Attorneys, Mediators, Guardian Ad Litems.
  - Presentation (15 Minutes): Alcohol Monitoring in Family Law Cases
- 3/9/23 Wisconsin Supreme Court Judicial Education Seminar
  - Attendance: 100 Family Law Judges, Commissioners
  - CLE Presentation (30 Minutes): AUD and Alcohol Monitoring in Family Law Cases
- 3/10/23 AAML (American Academy of Matrimonial Lawyers) Wisconsin Chapter
  - Attendance: 80 Family Law Judges, Commissioners, Attorneys, Mediators, Guardian Ad Litems.
  - Presentation (15 Minutes): Alcohol Monitoring in Family Law Cases
- 4/10/23 VDC-Virtual Divorce of California (Collaborative Divorce Practice Group)
  - Virtual Attendance: 30 Attorneys and Mediators
  - CLE Presentation (60 Minutes): AUD and Alcohol Monitoring in Family Law Cases
- 4/11/23 Collaborative Divorce - Toronto Canada
  - Virtual Attendance: 35 Attorneys and Mediators
  - CLE Presentation (60 Minutes): AUD and Alcohol Monitoring in Family Law Cases

- 4/28/23 AFCC (Association of Family and Conciliation Courts) Utah Chapter
    - Attendance: 120 Family Law Judges, Commissioners, Attorneys, Mediators
    - Presentation (30 Minutes): Alcohol Monitoring in Family Law Cases
- 5/9/23 San Bernardino County Barstow Superior Court / HDBA (High Desert Bar Association)
    - Attendance: 30 Judges, Commissioners, Attorneys, Mediators
    - CLE Presentation (60 Minutes): AUD and Alcohol Monitoring in Family Law Cases
- 5/17/23 Family Divorce Solutions of San Fernando Valley, CA
    - Virtual Attendance: 25 Attorneys and Mediators
    - CLE Presentation (60 Minutes): AUD and Alcohol Monitoring in Family Law Cases
- 5/18/23 San Diego County North Superior Court / NCBA (North County Bar Association)
    - Attendance: 30 Judges, Commissioners, Attorneys, Mediators
    - CLE Presentation (60 Minutes): AUD and Alcohol Monitoring in Family Law Cases

Alcohol Use Disorder (AUD)

Bench Card[1]

Authors: Hon. Karen S. Adam (Ret.) and Stephanie Tabashneck, Psy.D., Esq., NCJFCJ and Soberlink Advisory Committee

INTRODUCTION AND STATEMENT OF THE PROBLEM

Trial judges make scores of decisions every day, ranging from the simple to the complex. Among the most complex are those involving the impact of Alcohol Use Disorder (AUD) on the issues before the judge. Whether it is a disputed parenting plan, the appointment of a guardian, the safety of a child in a parent's care, or the appropriate sentence or disposition, decisions involving AUD pose major challenges for judges. Judges need a starting place to begin this decision-making process when AUD is present.

Alcohol is a legal, socially acceptable and culturally ingrained substance. Its use and misuse are hard to measure in an accurate and timely manner. Testing for alcohol use is expensive and hard to access for many people. It is often unclear what resources are available. Anyone who has spent time with someone misusing alcohol can recognize the signs but proving that allegation in court is extremely difficult. Even if judges have received AUD training, they cannot substitute their wisdom and expertise for the testimony, test results, and recommendations of an expert.

Alcohol misuse is a complex and challenging issue for judges and litigants. AUD can have significant and long-term impacts on the person, the family, and the community. It is critical that judges do the right things in cases involving AUD. But for many reasons, doing the right thing can be difficult to determine. That is why this AUD Bench Card is so valuable. Though it contains the most current research and data about AUD, it is also easy to understand and explain.

Judges could distribute this resource to counsel, litigants, and professionals involved in the case. Individual jurisdictions can supplement the Bench Card to reflect unique procedures or programs. It is usable across the judiciary and various different dockets. Most importantly, the following flow chart provides a road map for how judges can manage cases involving AUD to best serve the needs of the litigants, the court and the community. This Bench Card, however, should not replace resources to identify forms of violence that may be present and must be independently addressed. Ultimately, the desired outcome is to inform judges to support safe and healthy family connections, engagement, and stability.

10.5% OF CHILDREN LIVE WITH A PARENT WHO MISUSES ALCOHOL
14.5 MILLION ADULTS HAVE ALCOHOL USE DISORDER

National Institute on Alcohol Abuse and Alcoholism, June 2021

WHAT IS ALCOHOL USE DISORDER (AUD)?

WHAT IS ADDICTION?[2]

Addiction is a chronic, relapsing, brain-based disease characterized by continued use of a substance despite significant harmful consequences. When an individual becomes addicted to a substance, significant changes occur in their brain. Addiction disrupts the brain's reward system and produces powerful cravings. The pleasure from alcohol is experienced as more satisfying than other experiences typically perceived as pleasurable, such as relationships, food, and sex. Significant dysfunction occurs in psychological, social, and biological functioning.

This is often most noticeable in the continued use of alcohol even when use leads to major life problems. Like other chronic diseases such as heart disease and diabetes, addiction generally involves a series of relapses followed by remission. Improper treatment, stress, and unmanaged co-occurring conditions (e.g., mental illness, medical problems) can increase relapse risk. In fact, individuals with Alcohol Use Disorder are at risk of relapse even after many years of recovery.

WHAT IS AN ALCOHOL USE DISORDER?[3]

The criteria for Alcohol Use Disorder are set forth in the Diagnostic and Statistical Manual, Fifth Edition (DSM-V). The central aspect of an Alcohol Use Disorder is problematic use of alcohol resulting in significant impairment or distress. Symptoms which may or may not be present include use of larger amounts of alcohol over time, failure at efforts to stop or control alcohol use, strong urges to use, use resulting in failure to accomplish major life obligations at work, school, or home, continued use despite interpersonal problems, reducing, stopping, or failing to perform important activities due to alcohol use, a need for larger amounts of alcohol over time or diminished effect of alcohol, withdrawal, and excessive amounts of time dedicated to obtaining, using, or recovering from alcohol. NOTE: For individuals with AUD, sudden cessation of alcohol use may carry significant health risks.

10 ALCOHOL ADDICTION MYTHS[4]

1. All people who have engaged in problematic alcohol use are addicted to alcohol
2. People who misuse alcohol can quit whenever they want
3. Full abstinence from alcohol use is the only way to manage an AUD
4. Recurrence (relapse) should not happen
5. People need to hit "rock bottom" to get treatment
6. People need to want treatment for it to work
7. People need to 100% abstain from alcohol use to get treatment
8. "Interventions" are the best method to get a person into treatment
9. Treatment should only need to happen once
10. There is only one way to get control of problematic drinking (e.g., Alcoholics Anonymous, 28-day program)

QUESTIONS TO BE CONSIDERED BY A JUDICIAL OFFICER

- ✓ Is there a nexus between the child, the parent's alcohol use, and overall impairment?
- ✓ What data or information do you have about the parent's alcohol use and where did it come from?
- ✓ Is the parent's alcohol use objectively problematic?
- ✓ Is the alcohol use occurring during parenting time? If so, is it impairing the parent's ability to care for the child?
- ✓ What is the current direct harm to the child given the child's age, vulnerabilities, and developmental needs?
- ✓ What is the worst case scenario with regard to the child's safety?
- ✓ What is the direct harm to the child?
- ✓ What is the court's ability to order interventions, and are the interventions tailored to the goals for the family?
- ✓ What is the ability of the litigant to pay for and obtain the intervention or does the state have funds to support the intervention?
- ✓ How reliable is the intervention (e.g., evidence-based, efficacy rates, goodness of fit)?

CONSIDER THE RISK...

LOW RISK
- Alleged alcohol misuse
- Hearsay is the only evidence
- No history of AUD
- No nexus between child's needs and parent's alcohol use

MEDIUM RISK
- Some evidence of alcohol misuse in the past
- Has met some criteria for AUD by professional evaluator
- History of DUI case
- Support such as AA & Smart Recovery

HIGH RISK
- Clear evidence of current AUD or alcohol misuse
- Has met all the criteria for AUD by professional evaluator
- History of multiple DUI cases
- Clear nexus between parent's use and direct harm to the child

NOTE: Consider a professional evaluation to assess the severity of an individual's AUD as needed

	ALCOHOL MONITORING	SUPPORT RESOURCES	OUTPATIENT TREATMENT	INPATIENT TREATMENT	DETOX/ STABILIZATION
HIGH RISK	Supervised parenting time as monitoring may be an option	Encourage alcohol support resources such as AA & Smart Recovery	Encourage outpatient treatment for three to six months	Encourage inpatient treatment such as rehab and therapy	Detox and therapy may be needed for individuals with AUD
MEDIUM RISK	Monitor daily to ensure sobriety is maintained during recovery	Suggest alcohol support resources such as AA & Smart Recovery	Suggest outpatient treatment to assist in recovery		
LOW RISK	Monitor during parenting time for child safety & to gather evidence				

GOAL: AN OPTIMAL PARENTING PLAN

All the actions for the associated risk level below should now be considered to balance an optimal parenting plan (where a child has a relationship with both parents) and the child's safety

DOCUMENTING SOBRIETY FOR CHILD SAFETY WITH ALCOHOL MONITORING

NOTE: Use remote alcohol monitoring across all risk levels to document sobriety and promote safer parenting time.

Features in an effective system should include:

- Capability to send real-time results to unlimited recipients
- Facial recognition that instantly authenticates identity
- Software that performs instant analytics on testing activity
- Reports that are visually displayed in a calendar layout
- Multiple sensors that prevent tampering
- Agreements that detail all aspects of monitoring
- Creation of court-admissible reports
- Availability of experts to testify at any time

[1]This bench resource is intended only for cases involving adults in family court and not adolescents.
[2]Tabashneck, S. (Ed) (2021). Substance use and parenting: Best practices for family court practitioners. Boston: Massachusetts Chapter of the Association of Family and Conciliation Courts. https://bit.ly/3wxXfZY
[3]Id.
[4]Id.

Proof
Protection
Peace of Mind

The only alcohol monitoring system with real-time results, facial recognition, tamper detection, and Advanced Reporting.

SOBERLINK®
Improving Lives

What is Soberlink?

Soberlink supports accountability for sobriety through a comprehensive alcohol monitoring system.

- Professional grade breathalyzer
- Wireless connection to an automated web portal
- Facial recognition to confirm identity
- Real-time alerts and reports of testing activity
- FDA 510(k) clearance
- Used in Family Law, Addiction Recovery, and Workplace Compliance in all 50 states

Benefits of Soberlink

- Family Law Specific Program
- Discreet and Simple Activation
- Expert Customer Service

What Customers Say

The Soberlink Device reminds me of a phone or pager. It's discreet, super easy to use, and makes me responsible.

– Soberlink Monitored Party

The facial recognition and other technical aspects that are constantly being developed make Soberlink different from other alcohol monitoring solutions.

– Judge

The immediate notifications that Soberlink provides gives me reassurance that my child is safe.

– Soberlink Concerned Party

Family Law Programs

Getting started on Soberlink is easy. Simply choose a **monthly m**

Monthly Monitoring Plans	**Par** Flexible mo time. Testi
	BASIC $129* per month
Emailed Daily Reports of the Previous Day's Testing and/or Weekly Summary Report of Previous Week's Testing	✓
Unlimited Number of Contacts Can Receive Test Results	
Emailed Test Results in Real-time	
Text and Emailed Test Results in Real-time	
Unlimited Reports on All Testing Activity for Any Given Date Range	

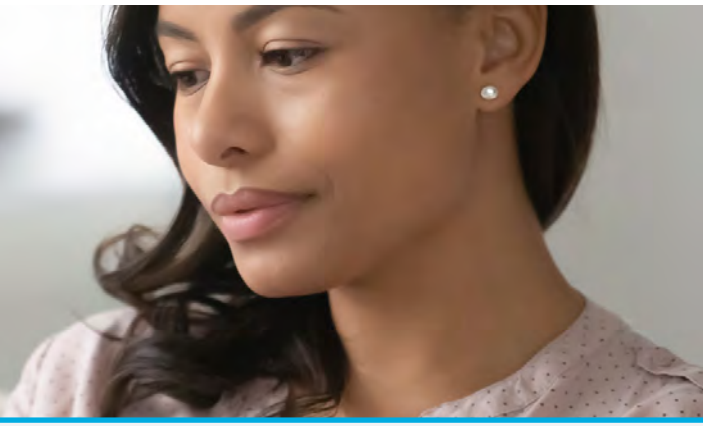
$4.16 per day

Device Options

onitoring plan and **Soberlink device.**

LEVEL 1** **renting Time Only** nitoring, only during parenting ng schedules self-managed.		**LEVEL 2** **Daily Testing** Consistent monitoring, 7 days a week. Testing schedules managed by Soberlink.		
MOST POPULAR			MOST POPULAR	
PLUS	PREMIUM	BASIC	PLUS	PREMIUM
$179* per month	$229* per month	$169* per month	$209* per month	$259* per month
✓	✓	✓	✓	✓
✓	✓		✓	✓
✓	✓		✓	✓
	✓			✓
	✓			✓
$5.77 per day	$7.39 per day	$5.45 per day	$6.74 per day	$8.35 per day

*All prices are subject to change. Actual program price is based on daily rate.
**The Level 1 Program is limited to 20 days of testing per month with a $75 overage fee.



Scan the code or visit the link to see device prices at

soberlink.com/devices

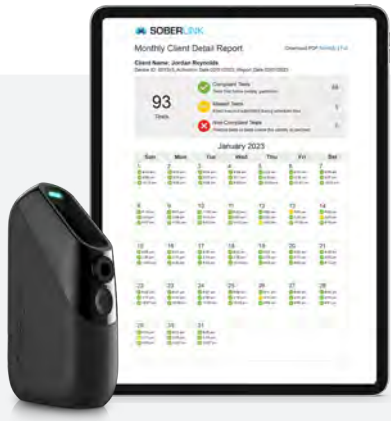
SOBERLINK®
Improving Lives

Alcohol Facts

10% OF CHILDREN
live with a parent with alcohol problems*

15.1 MILLION ADULTS
have Alcohol Use Disorder*

55,000 CHILD CUSTODY CASES
each year involve a parent who abuses alcohol*



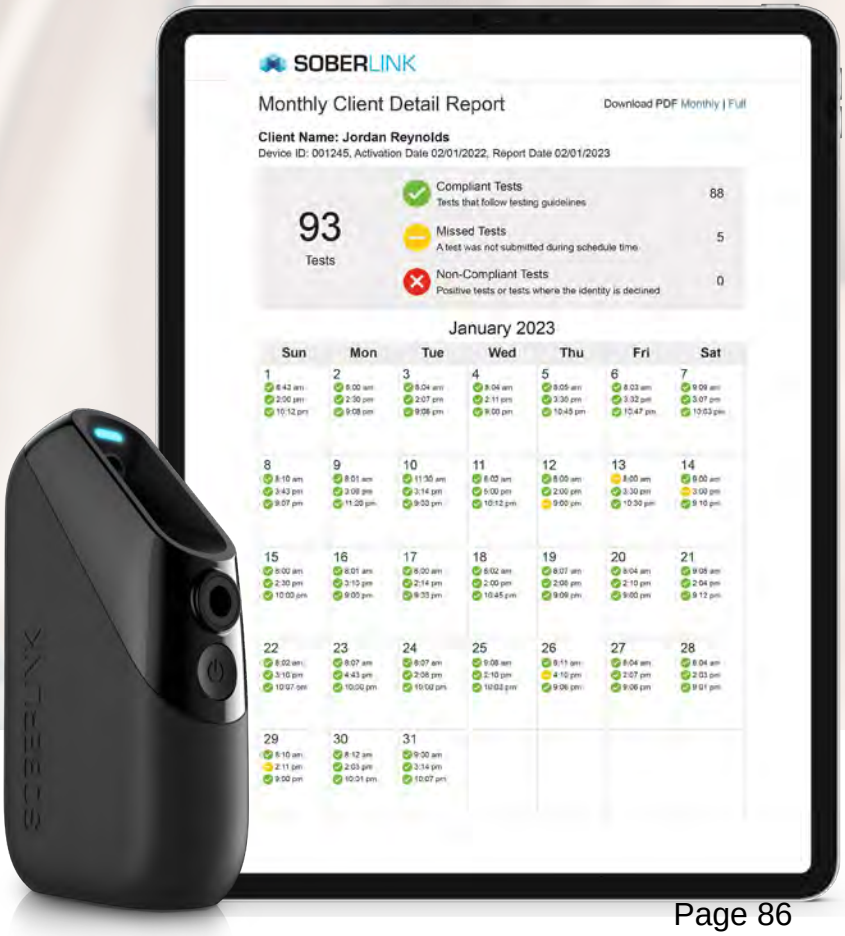
Learn why Soberlink is the #1 remote alcohol monitoring solution for Family Law.

714.975.7200 | info@soberlink.com

*Source: National Institute on Alcohol Abuse and Alcoholism

Proof
Protection
Peace of Mind

The only alcohol monitoring system with real-time results, facial recognition, tamper detection, and Advanced Reporting.



SOBERLINK®
Improving Lives

Introduction

Judges, Attorneys, Mediators, and GALs,

The National Institute on Alcohol Abuse and Alcoholism says that:

- 10% of children live with a parent who abuses alcohol
- 15.1 million adults have alcohol use disorder

These statistics, combined with divorce rates across the country, equates to approximately 55,000 child custody cases each year involving alcohol.

There is now a way to create safer co-parenting environments by addressing alcohol abuse in real-time.

Soberlink, the most advanced remote alcohol monitoring system for child custody, uses a professional grade breathalyzer with facial recognition. This ensures accurate results that can be sent in real-time by text or email.

Clients and Professionals have access to many in-house support services including:

- Client Records
- Expert evaluations
- A dedicated Family Law team

Recently, Soberlink released the more compact, higher performance Connect Device and the easy-to-digest Advanced Reporting. Both of these releases speak to our continued efforts to innovate.

Our commitment to the best interests of the children involved and respect of Alcohol Use Disorder has led us to publish a Soberlink Best Practices article based on industry professionals. Additionally, a whitepaper on our admissibility was published by a third-party authority.

Details on our new features and full-length publication of the articles mentioned can be found in this comprehensive resource brochure or online at: www.soberlink.com/professionals-family-law.

We look forward to exceeding your expectations and those of the clients you refer to us.

Sincerely,

Chris Beck

Chris Beck
VP of Business Development - Family Law
Soberlink Healthcare LLC

Table of Contents

What is Soberlink?

Soberlink supports accountability for sobriety through a comprehensive alcohol monitoring system.

- Professional grade breathalyzer
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- Facial recognition to confirm identity
- Real-time Alerts and Reports of testing activity
- FDA 510(k) clearance
- Used in Family Law, Addiction Recovery, and Workplace Compliance in all 50 states

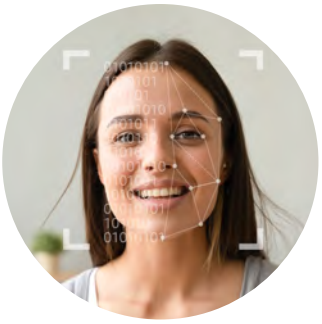
How Does Soberlink Work?

MONITORED CLIENT

Parent who submits tests

Discreet & Convenient

Client can privately submit tests anytime, anywhere



Accountability

Identity confirmed through facial recognition technology

CONCERNED PARTY

Parent who receives real-time test results

Peace of Mind

Results can be received in real-time

Intuitive Reporting

Weekly and/or monthly Reports of all testing received via email

Device Options

Soberlink Cellular

Size: 5"h x 2.8"w x 1.4"d
Weight: 8.4 ounces (238 grams)

Device Requirements:
A smartphone is not needed.

Soberlink Connect®

30% Smaller

40% Lighter

50% Faster

Size: 4.75"h x 2.5"w x 1.25"d
Weight: 5.3 ounces (150 grams)

Device Requirements:
Requires a smartphone.
Android or iPhone.

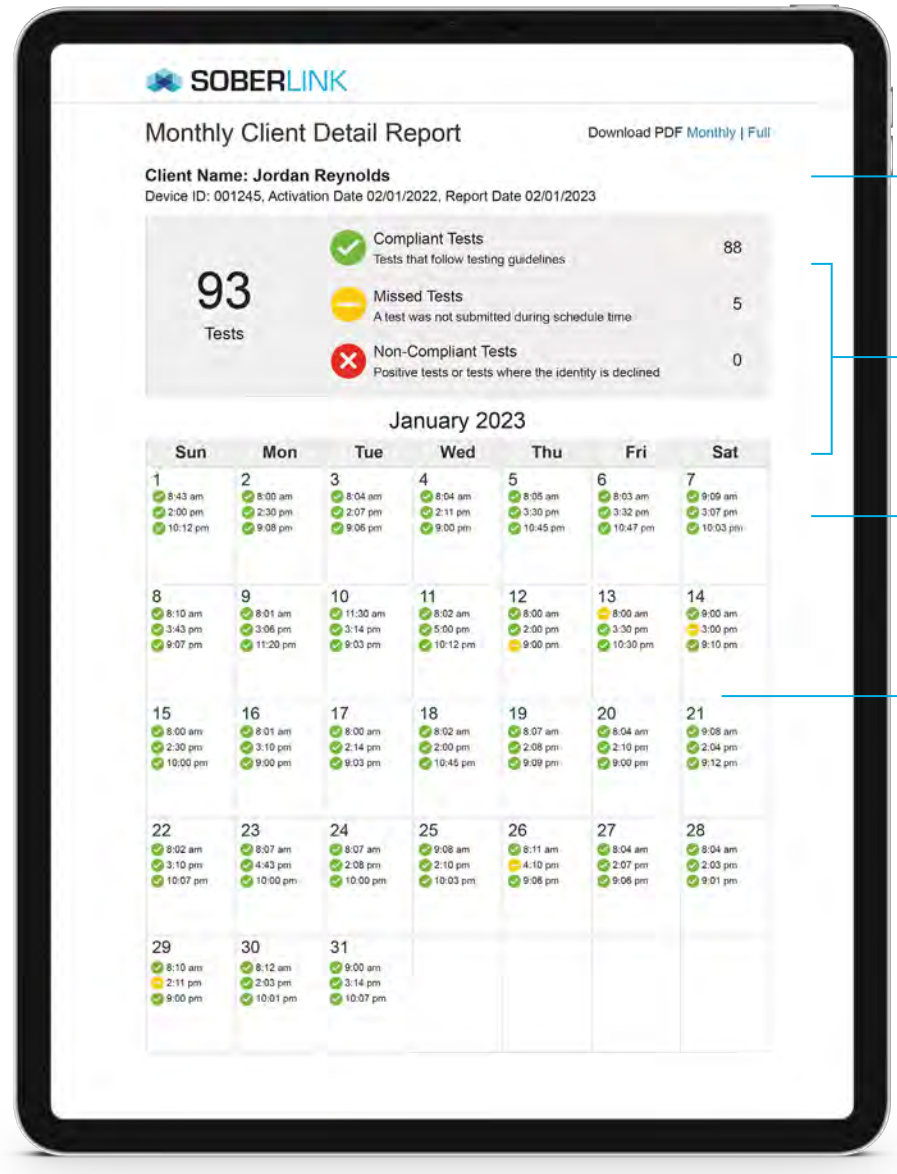
FEATURES	CELLULAR	CONNECT
Battery Life	5+ Days	15+ Days
Professional Grade Fuel Cell	✓	✓
Facial Recognition & Tamper Detection	✓	✓
Cellular Connectivity Built Into Device	✓	
Cellular and WiFi Connectivity via Smartphone App		✓
Pocket-size		✓
Latest Iteration USB Type-C Connector		✓
Micro USB Charger	✓	

Soberlink Advanced Reporting™

Advanced Reporting is a breakthrough innovation that improves efficiency and enhances ease of use for Soberlink customers. Prior to Soberlink's Advanced Reporting™, alcohol monitoring systems did not emphasize the importance of delivering easy-to-digest Reports. Reports were lengthy and difficult to understand.

The intelligence now embedded in Soberlink's Advanced Reporting™ makes it the world's smartest and easiest-to-read Reporting system.

Key Highlights



Easily download Reports any time

Quickly see a summary of tests

Review testing history in the calendar view

At-a-glance view with easy-to-read test icons

Quality and Security You Can Trust

Most Tested, Most Trusted

Our commitment to accuracy drives thousands of testing hours and extensive quality control programs.

Facial Recognition Technology

We have integrated a high-resolution camera and facial recognition technology to confirm identity.

> I use Soberlink as part of a custody arrangement with my ex-wife. I test my BAC multiple times on days when I'm watching my children. Accuracy is a vital key to keeping my kids. I wouldn't trust anyone but Soberlink.
>
> **— Soberlink Client**

Top Quality
Reliability and security you can trust since 2011

FDA Cleared
For Medical Use and held to the highest medical standards

ISO Certified
Assembled in the USA under ISO certifications

Only the Highest Quality

Our U.S.-engineered Devices use professional grade fuel cell sensors to deliver consistent, reliable BAC readings.

Tamper Resistance

Our internal sensors can detect when the client is attempting to defeat the system by tampering, ensuring test integrity.

> Soberlink is my go-to tool for family law cases that involve alcohol. I used to use urine lab testing, but Soberlink has changed the game with mobile, real-time monitoring that links to all Concerned Parties. Now my court orders are specifically identifying Soberlink with customizable testing schedules.
>
> **— Family Law Attorney**

Tamper Resistant
Detects a wide variety of tampering attempts

Admissibility
Passes Frye and Daubert Standards

Law Enforcement
Accepted by law enforcement/ courts since 2011

Family Law Programs

Level 1 Parenting Time

Co-parenting schedules are always changing, making flexibility a key component to a successful co-parenting arrangement. Soberlink's Level 1 Parenting Time Only Program is a one-of-a-kind program that works with any parenting schedule. The program allows the Monitored Client to submit tests only during parenting time.

Program Overview

- Real-time Alerting on Testing Results
- Schedule Managed by Co-Parents
- Test Only During Parenting Time

Sample Testing Schedules

Below is an example of a parenting exchange starting 9am Tuesday to 9am Wednesday and 5pm Friday to 12pm Sunday.

LEVEL 1 TESTING*

		PARENTING TIME ONLY			PARENTING TIME ONLY		
	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY	SUNDAY
6:00 AM							
7:00 AM		7:00-9:00 AM	7:00-9:00 AM			7:00-9:00 AM	7:00-9:00 AM
8:00 AM							
9:00 AM		9AM PICK UP	9AM DROP OFF				
10:00 AM							
11:00 AM							
12:00 PM							12PM DROP OFF
1:00 PM						1:00-3:00 PM	1:00-3:00 PM
2:00 PM							
3:00 PM		3:00-5:00 PM			3:00-5:00 PM		
4:00 PM							
5:00 PM					5PM PICK UP		
6:00 PM							
7:00 PM							
8:00 PM							
9:00 PM		9:00-11:00 PM			9:00-11:00 PM	9:00-11:00 PM	
10:00 PM							
11:00 PM							

*Level 1 has no testing schedule. The schedule managed by the co-parents. Soberlink Best Practices suggests 2-hour testing windows for each test.

Level 2 Daily Testing

Soberlink's Level 2 Daily Testing Program is for situations that require testing seven days a week. A set schedule with daily testing is the most effective way to monitor alcohol use and document sobriety for a high-risk client. Testing times are managed by the Soberlink System, which sends reminder text messages for scheduled tests and documents missed tests. A typical schedule has 3 to 4 tests per day during waking hours.

Program Overview

- Real-time Alerting on Testing Results
- Testing Schedule Managed by Soberlink System
- Testing Seven Days a Week

LEVEL 2 TESTING

	DAILY TESTING 7 DAYS A WEEK						
	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY	SUNDAY
6:00 AM							
7:00 AM	7:00-9:00 AM	7:00-9:00 AM	7:00-9:00 AM	7:00-9:00 AM	7:00-9:00 AM	7:00-9:00 AM	7:00-9:00 AM
8:00 AM							
9:00 AM		9AM PICK UP	9AM DROP OFF				
10:00 AM							
11:00 AM							
12:00 PM							12PM DROP OFF
1:00 PM							
2:00 PM	2:00-4:00 PM	2:00-4:00 PM	2:00-4:00 PM	2:00-4:00 PM	2:00-4:00 PM	2:00-4:00 PM	2:00-4:00 PM
3:00 PM							
4:00 PM							
5:00 PM					5PM PICK UP		
6:00 PM							
7:00 PM							
8:00 PM							
9:00 PM	9:00-11:00 PM	9:00-11:00 PM	9:00-11:00 PM	9:00-11:00 PM	9:00-11:00 PM	9:00-11:00 PM	9:00-11:00 PM
10:00 PM							
11:00 PM							

Family Law Plan and Device Options

Getting started on Soberlink is easy. Simply choose a **monthly monitoring plan** and **Soberlink device.**

Monthly Monitoring Plans

	LEVEL 1** Parenting Time Only Flexible monitoring, only during parenting time. Testing schedules self-managed.			LEVEL 2 Daily Testing Consistent monitoring, 7 days a week. Testing schedules managed by Soberlink.		
	Basic	MOST POPULAR Plus	Premium	Basic	MOST POPULAR Plus	Premium
	$129* per month	$179* per month	$229* per month	$169* per month	$209* per month	$259* per month
Emailed Daily Reports of the Previous Day's Testing and/or Weekly Summary Report of Previous Week's Testing	✓	✓	✓	✓	✓	✓
Unlimited Number of Contacts Can Receive Test Results		✓	✓		✓	✓
Emailed Test Results in Real-time		✓	✓		✓	✓
Text and Emailed Test Results in Real-time			✓			✓
Unlimited Reports on All Testing Activity for Any Given Date Range			✓			✓
	$4.16 per day	$5.77 per day	$7.39 per day	$5.45 per day	$6.74 per day	$8.35 per day

*All prices are subject to change. Actual program price is based on daily rate.
**The Level 1 Program is limited to 20 days of testing per month with a $75 overage fee.

Device Options

See device prices at **soberlink.com/devices**

Client Records

The Soberlink Support Team can help you with all client record related requests. The following options outline the best ways to get the information you need.

Option 1: Client Record Request

If you're a listed Contact on the Monitoring Agreement, email support@soberlink.com: Your Name, Monitored Client's Name, Monitored Client's Email, and Date Range for Client Records.

Please use the email address that matches the one on the Family Law Monitoring Agreement. Once the listed Contact's identity is verified, we'll send the requested information. We charge a fee of $25 per request for those who are not participating in our Premium Monitoring Plan. The fee will be the responsibility of the Requesting Party.

Option 2: Authenticated Client Record Request

If you need to have the records notarized by a Soberlink Custodian of Records, please state that in the email to support@soberlink.com. There is a fee of $50 for notarized records, which is the responsibility of the Requesting Party.

Option 3: Client Record Request via Subpoena

If you or your client are not listed as Contacts on the associated Monitoring Program Agreement, you may subpoena the records by following the submission guidelines below.

Requesting Records

Soberlink can produce the following types of records without a subpoena* if the requesting party or the requesting party's client is listed as an Involved Party** in accordance with the applicable Monitoring Program Agreement: Client Detail Reports, Monitoring Agreements, Change Order Requests

*May be subject to additional fees

**Involved Parties include the Monitored Client, Concerned Party, and/or Contact(s) on the Monitoring Program Agreement

Issuing Subpoenas

Subpoenas must be issued pursuant to the Interstate and International Depositions and Discovery Act (California Code of Civil Procedure Sections 2029.100 -2029.900). In sum, in order to effectuate valid service, you must either request issuance of a subpoena from the California Superior Court of relevant jurisdiction by way of an application drawn in accordance with the applicable California Judicial Council form and pay the appropriate fee to the Clerk of the Court pursuant to California Government Code Section 70626 (Code Civ. Proc., § 2029.300(a)(b)(1) and (2)) or retain local counsel to issue the subpoena and effectuate service. Section 2029.300 states:

> a) To request issuance of a subpoena under this section, a party shall submit the original or a true and correct copy of a foreign subpoena to the clerk of the superior court in the county in which discovery is sought to be conducted in this state. A request for the issuance of a subpoena under this section does not constitute making an appearance in the courts of this state.
>
> b) In addition to submitting a foreign subpoena under subdivision (a), a party seeking discovery shall do both of the following:
>
> > 1) Submit an application requesting that the superior court issue a subpoena with the same terms as the foreign subpoena. The application shall be on a form prescribed by the Judicial Council pursuant to Section 2029.390. No civil case cover sheet is required.
> >
> > 2) Pay the fee specified in Section 70626 of the Government Code.

Further, Soberlink objects to the purported service of the subpoena by way of electronic mail. Subpoenas must be personally served. (See California Code of Civil Procedure, § 2029.400.)

Legal Ease for Requesting Monitored Clients Testing Information

As stated in the Monitoring Agreement: By entering into this Agreement, the Monitored Client and Concerned Party (and Contacts, if any) waive any and all objections as to foundation and authenticity to the extent permitted by governing law as it relates to any legal proceeding that is the subject of this Agreement. It is the mutual intent of the Monitored Client and Concerned Party that Authenticated Test Results may be utilized in the subject legal proceeding without the need for subpoena, service of process, or custodian of record testimony.

How to Get Started

Follow these steps to set up your client on Soberlink.

Step 1 Decide on Family Law Program Level and Plan

- Refer to the "Family Law Pricing" table (see page 9).

Step 2 Develop the Parenting Plan or Order

- Refer to our "Order Language Outline" (see page 12) for clarification on how to correctly implement the Soberlink System

Step 3 Client Requests a Monitoring Agreement and Purchases Device

- **If the Judge did not order the monitoring**
  One of the parties goes to soberlink.com to request a "Monitoring Agreement" (see page 19) and purchase a Device. The agreement is then sent by Soberlink electronically to the two parties to sign.

- **If the Judge orders the monitoring**
  Complete the "Family Law Order Form" (see page 17). Have the Judge sign the order and fax or email it to 310.388.5605 or support@soberlink.com.

Step 4 Client Calls Soberlink to Activate

- 5-minute call to Soberlink Customer Service
- Monitored Client will be activated and takes first test

Step 5 Client Starts Testing

*The Order Language Outline and Family Law Order Form can be found at: **soberlink.com/professionals-family-law**

SOBERLINK

Soberlink Implementation Outline for Law Professionals

Introduction

Soberlink alcohol monitoring has been used in Family Law since 2011. However, as with any new technology, some confusion may occur during implementation. This outline is meant to guide law professionals through the various steps needed to correctly implement the Soberlink system.

NOTE: This document and any order created from it **are not considered final documents** and will not be accepted by Soberlink to begin testing set up.

Definition of Terms

These terms have been defined for the purposes of this document.

- **Monitored Client**: The parent required to submit tests using the Soberlink Device
- **Concerned Party**: The person who will receive Soberlink test results and has the best interests of the child(ren) in mind
- **Order**: The court order, parenting agreement or any other document created by the attorney, mediator, judge etc. that includes details on how the Soberlink Agreement should be filled out
- **Soberlink Agreement**: The contract that will be requested at www.soberlink.com, completed and electronically signed by the Monitored Client and Concerned Party. This document dictates how Soberlink monitoring will be set up, and must be completed before Soberlink monitoring can begin
- **Alerts/Reports**: Text and/or email notifications regarding tests/test results
- **Soberlink Best Practices: Based on an Expert Panel Document**: Many times, orders for Soberlink monitoring are incorrectly written with the same language as older methods such as lab testing. Understanding that guidance was needed, Soberlink brought together a group of Addiction Treatment experts who formed a panel to determine the most effective way to use Soberlink. The panel's results were published in the Mar/Apr 2017 issue of the **Journal of Addiction Medicine** (www.soberlink.com/alcohol-addiction-recovery-professionals). Based on their findings, Soberlink created a paper called **Soberlink Best Practices: Based on an Expert Panel** (www.soberlink.com/professionals-family-law). **It is recommended that this paper be read before completing this outline.**

Contents

Important Reminders

- This document and any order created from it **are not considered final documents** and will not be accepted by Soberlink to begin testing set up. A Soberlink Agreement must be requested at www.soberlink.com, completed and electronically signed by the Monitored Client and Concerned party before monitoring can begin.

- Soberlink set up will be based on the details of the Soberlink Agreement, and not the order. If an order's details do not align with the Soberlink Agreement, the Soberlink Agreement will still dictate testing set up.

- If testing is mandated by a judge, a **Family Law Order Form** (www.soberlink.com/professionals-family-law) should be filled out and submitted to Soberlink. Soberlink will use this document to prefill the Soberlink Agreement before it is sent to the Monitored Client and Concerned Party for electronic signature.

Soberlink Implementation Steps

1. Law Professional completes Order Language Outline (See page 3)

2. Law Professional creates the order

3. Either the Monitored Client or Concerned Party Requests the Soberlink Agreement (Agreement Request can be found at: www.soberlink.com/start-family-law-agreement)

4. Monitored Client or Concerned Party Fills out Soberlink Agreement in Accordance with Order

5. Monitored Client and Concerned Party electronically sign Soberlink Agreement

Order Language Outline

Questions to be Answered and Written into Court Order

How often will monitoring occur? (Which Soberlink Program will be used?)

- ○ Only During Parenting Time (Level 1 – Parenting Time Only)
- ○ 7 Days a Week (Level 2 – Daily Testing)

How will testing be reported (Which Soberlink Plan will be used?)

- ○ **Basic Plan** – No real-time Alerts. Daily email Reports of previous day's testing. Limited to 2 Report recipients. (Monitored Client and Concerned party)
- ○ **Plus Plan** – Real-time email Alerts. Daily, Weekly and Monthly email Reports. Unlimited Report recipients.
- ○ **Premium Plan** – Real-time email and text Alerts. Daily, Weekly, and Monthly email Reports. Unlimited Report recipients.

Who will pay for the device and monitoring fees?

- ○ Monitored Client
- ○ Concerned Party
- ○ Other

Monitored Client (The parent who is required to submit tests using the Soberlink Device)
Name: _____ Email: _____ Phone #: _____

Concerned Party (The person who receives test results and has the best interests of the child(ren) in mind)
Name: _____ Email: _____ Phone #: _____

Other
Name: _____ Email: _____ Phone #: _____

Note: The monitored Client, Concerned Party and additional Contacts will be set up with Default Alerts and Reports. Parties can change their personal Alerts or Reports after setup by emailing support@soberlink.com.

Additional Contact to Receive Alerts or Reports:

Name: _____ Email: _____ Phone #: _____

Name: _____ Email: _____ Phone #: _____

How many tests per day are required during a full day of testing?

**Note: Soberlink Best Practices states to start with 3 tests/day and reducing to 2 tests/day with consistent compliant behavior. Guidance is provided in Soberlink Best Practices: Based on an Expert Panel.*

- ○ 2 Tests/day (When waking up and before bed)
- ○ 3 Tests/day (When waking up, mid-day, and before bed)
- ○ 4 Tests/day (When waking up, early mid-day, late mid-day, and before bed)

What are the consequences of a positive test?

**Note: Guidance is provided in Soberlink Best Practices: Based on an Expert Panel.*

What are the consequences of a missed test?

**Note: Guidance is provided in Soberlink Best Practices: Based on an Expert Panel.*

Soberlink Required Language for All Orders

- Alcohol monitoring will be obtained from Soberlink. A device shall be purchased at www.soberlink.com
- A Soberlink Monitoring Agreement shall be requested at www.soberlink.com and electronically signed by the Monitored Client and Concerned Party before monitoring can begin.
- The party that requests the agreement at www.soberlink.com will fill out the agreement details.
- Upon activation, Monitored Client will opt in to Soberlink text messages
- Soberlink records will be admissible in court

Suggested Order Language for Testing Instructions

Level 1 – Parenting Time Only

- A test shall be sent 1 hour prior to Parenting Time and immediately following the conclusion of Parenting Time.
- During Parenting Time, the Monitored Client shall submit a test upon waking up, in the middle of the day, and before bed.
- A test will be considered "Missed" if it is not performed within 2 hours and 15 minutes of the agreed test time.

Level 2 – Daily Testing

- Testing is required 7 days a week
- No alcohol is allowed to be consumed at any time
- 3 Tests will be scheduled per day
- Test windows will be set at 2 hours and 15 minutes
- Tests will be scheduled upon waking up and before bed. The first test of the day shall be scheduled at the Monitored Client's typical waking hour. The last test of the day will be scheduled at the Monitored Client's typical bed time hour. The 3rd test will be scheduled by Soberlink according to best practices.

Family Law Order Form

SOBERLINK

Soberlink Family Law Order Form

Doc Code: _____

Official Document Stamp

IN AND FOR COUNTY OF _____

CASE NO. _____

Soberlink will use this document to fill out the details of the Soberlink Agreement before it is sent out to the Monitored Client and Concerned Party for signature. Before the monitoring can begin, the Soberlink Agreement must be electronically signed by both parties, and a Device must be purchased. The information provided in this document will supersede any other agreements between the Parties and Soberlink.

ORDER

It is agreed/ordered that_____[Monitored Client] will participate in Soberlink Monitoring under the following conditions. The Monitored Client and Concerned Party can agree to change the Program and/or Plan ☐ months after testing has begun.

FAMILY LAW MONITORING PROGRAM (Choose One)

☐ **LEVEL 1 – Parenting Time Only:** Test times should be included in the parenting plan and are managed by the Monitored Client and Concerned Party

☐ **LEVEL 2 – Daily Testing:** 7 days a week, 365 days a year at agreed upon times, managed by the Soberlink System

IF **LEVEL 2** IS CHOSEN, FILL IN TESTING TIMES BELOW (Fill Test Times)

- The First Test of the Day is ☐ : 00 AM, and the Last Test of the Day is ☐ : 00 PM
- Select the total number of scheduled tests per day (Choose One)

☐ 2 Tests ☐ 3 Tests ☐ 4 Tests

Note: Soberlink Best Practices suggests the first test of the day to occur shortly after waking and the last test of the day to occur just before bedtime. If more than 2 tests per day are required, the additional test times will be scheduled by Soberlink in between the first and last tests.

HOW TESTING ACTIVITY IS REPORTED TO CONTACTS (Choose One)

☐ **Basic Plan:** Emailed Daily Reports of the previous day's testing (No real-time alerts)

☐ **Plus Plan:** Emailed test results in real-time to unlimited contacts

☐ **Premium Plan:** Text and Emailed Test results in real-time to unlimited contacts

Note: Pricing varies by level and plan. Details can be found at www.soberlink.com.

JDG-FLM-19-003

SOBERLINK

WHO IS RESPONSIBLE FOR THE MONTHLY MONITORING FEES?

☐ Monitored Client ☐ Concerned Party

CONTACT INFORMATION

Monitored Client (The person who is required to submit tests using the Soberlink Device.)

Name: _____ Email: _____ Phone #: _____

Concerned Party (The person who receives test results and has the best interests of the child(ren) in mind.)

Name: _____ Email: _____ Phone #: _____

Note: The Monitored Client, Concerned Party and additional Contacts will be set up with default Alerts and Reports based on the plan chosen. Parties can change their personal Alerts or Reports after setup by emailing support@soberlink.com.

Additional Contact to receive Alerts or Reports (Only Plus and Premium Plans)

Name: _____ Email: _____ Phone #: _____

Name: _____ Email: _____ Phone #: _____

The above conditions are ordered by:

(Document not valid without signature)

_____
Judge Name

_____ _____
Judge Signature Date

Send to support@soberlink.com or fax to 310.388.5605

Sample Monitoring Agreement

Below is a sample Level 2 agreement. A sample Level 1 agreement can be found at: soberlink.com/professionals-family-law

SOBERLINK

Level 2 Family Law Monitoring Program Agreement

AGR-FLM2-23-002

INTRODUCTION

PLEASE CAREFULLY REVIEW THIS ENTIRE FAMILY LAW MONITORING PROGRAM AGREEMENT ("AGREEMENT") BEFORE SIGNING

Involved Parties

"Involved Parties" consist of a Monitored Client, a Concerned Party and in some instances, Contacts.

The "Monitored Client" is the person who is required to submit tests using the Soberlink device ("device").

The "Concerned Party" is the primary Contact who focuses on the best interests of the child(ren) and needs to receive test results. In family law proceedings, this is often the spouse, ex-spouse, guardian or an Involved Party's legal representative.

"Contacts"[1] include persons and entities other than the Concerned Party such as an attorney for the Monitored Client or Concerned Party, family member or, friend. Contacts are authorized to receive Alerts, Reports, Authenticated Test Results, and Non-Authenticated Test Results for the entire history of testing. Contacts may be added or deleted upon mutual written agreement of the Monitored Client and Concerned Party.

Managing Expectations and BAC Levels

Soberlink devices detect the presence of alcohol in the Monitored Client's system at the time of testing. Depending on the test schedule and time frame, small amounts of alcohol may eliminate before the next scheduled test. If alcohol has completely eliminated from the Monitored Client's system, it won't be detected.

It's crucial for all parties involved to recognize the nuances in BAC levels to ensure appropriate actions are taken in the event of a positive test.[2] Although BAC levels may seem similar, the degree of intoxication varies significantly. For instance, a BAC of .009 is considered low and usually doesn't affect an adult's functioning. On the other hand, a BAC of .09 is high and exceeds the legal limit to operate a vehicle in many jurisdictions.

Disclaimer: Soberlink is not intended to be a substitute for professional medical advice, diagnosis, or treatment. Monitored Clients should always consult their physician with any questions regarding medical conditions such as physical alcohol dependency to obtain advice and treatment before beginning use of the Soberlink system.

Alerts and Reports

"Alerts" are sent in real-time, whereas "Reports" are sent on an automated basis – Daily, Weekly, or Monthly – or by request.

Compliant Tests: Tests where no alcohol is detected, and the identity is confirmed

Missed Tests: Scheduled tests that are not received within the test window

Non-Compliant Tests: Positive tests or tests where the identity is declined

Test Confirmation and Retesting

Positive Test Confirmation: Soberlink considers the first test a screening test. If a screening test is positive for alcohol, the Monitored Client will be prompted to retest in 15 minutes. Retesting helps determine whether positive tests are the result of alcohol consumption or cross-contamination (e.g., mouthwash, hand sanitizer). If the retest is positive or the first retest window is missed, the test is reported as Non-Compliant. If the first retest is negative for alcohol, it will be reported as a single Compliant test.

Declined Identity Confirmation: Retesting also helps determine if a declined identity was due to accidental obstruction or from intentional tampering. If the identity cannot be verified, then a retest is scheduled. A declined identity will only result in a Non-Compliant test being reported if the Monitored Client fails to retest or if the identity still cannot be verified with the retest. If the identity can be verified in the retest, it will be reported as a single Compliant test.

Screening tests that are negative for alcohol and the identity is confirmed will be reported as Compliant tests.

Tampering

Soberlink considers the attempt to trick or beat the the Soberlink device as a Tamper. Tests identified as Tampers will be reported to all Involved Parties.

Initials
JR
JR

Initials
MR
MR

[1] Contacts may only be added in the Plus and Premium Family Law Plans.
[2] Involved Parties should comply with any legal orders or agreements that were made outside of Soberlink's scope or influence.

SOBERLINK

Level 2 Family Law Monitoring Program Agreement

AGR-FLM2-23-002

LEVEL 2 PROGRAM SETUP

ATTENTION – Before signing this Agreement, carefully review all the information and make sure that you understand the Family Law Monitoring Program and your rights and obligations. Should you have any questions about the Family Law Monitoring Program or this Agreement, please contact Soberlink at 714-975-7200 or support@soberlink.com. Please be aware that any modifications, amendments, or changes to this Agreement may require the consent of the Monitored Client and Concerned Party.

Testing Schedule

- 7 days per week of testing with a 2 hour and 15-minute test window for each scheduled test (e.g., if a test is scheduled at 2:00 PM, Soberlink must receive the test between 1:45:00 PM and 3:59:59 PM)
- The Monitored Client is prompted by Soberlink via text message to submit tests; if the Monitored Client does not submit a test on time, a Missed test is reported.

  Best practices suggest for the first test of the day to occur upon waking and the last test of the day to occur before preparing to sleep. If you select more than two tests per day, Soberlink will schedule the additional tests to be evenly distributed throughout the day at fixed intervals.

  The first test of the day will be at 7 :00 AM

  The last test of the day will be at 10 :00 PM

  Total number of scheduled tests per day: (Choose One)

  ○ 2 tests ◉ 3 tests ○ 4 tests

Price Plan[3]

All plans include emailed Daily, Weekly, and/or Monthly Reports. Choose a plan:

○ **Basic**
$169 per month
Emailed results of previous day's tests

○ **Plus**
$209 per month
Real-time email Alerts

◉ **Premium**
$259 per month
Real-time email and text Alerts

Alerts and Reports

Alert and Report options can be changed after setup by emailing support@soberlink.com[4]

BASIC	PLUS	PREMIUM
Monitored Client **Reports:** Daily, Weekly, Monthly	**Monitored Client** **Alerts:** Non-Compliant & Missed Email Alerts **Reports:** Weekly, Monthly	**Monitored Client** **Alerts:** Non-Compliant & Missed Email Alerts **Reports:** Weekly, Monthly
Concerned Party **Reports:** Daily, Weekly, Monthly	**Concerned Party** **Alerts:** Non-Compliant & Missed Email Alerts **Reports:** Weekly, Monthly	**Concerned Party** **Alerts:** Non-Compliant & Missed Email and Text Alerts **Reports:** Weekly, Monthly
	Additional Contacts **Alerts:** None **Reports:** Weekly, Monthly	**Additional Contacts** **Alerts:** None **Reports:** Weekly, Monthly

Initials JR JR

Initials MR MR

[3] Price Plans are subject to change to reflect market rate at time of device activation.
[4] Alerts may be delayed at times due to test confirmation & retesting and Storing.

SOBERLINK

Level 2 Family Law Monitoring Program Agreement

AGR-FLM2-23-002

INVOLVED PARTIES

Monitored Client	First Name: Jordan	Last Name: Reynolds	Email: jreynolds22@mailinator.com
	Birthdate: 11/27/1986	Gender: Male	State: CA California
Concerned Party	First Name: Morgan	Last Name: Reynolds	Email: mreynolds@mailinator.com

Which Party is Responsible for Paying the Monthly Fee?

Choose One: Monitored Client

Note: If a Soberlink device was purchased under a Minimum Term Contract, the party who is responsible for paying the monthly fee will be responsible for any early termination fees.

Additional Contacts (e.g., Attorneys, Family Members, Etc.)

Note: To receive Alerts and Reports, Contacts must first set up a MySoberlink account and accept the connection.

Contact Information:

First Name: Attorney Last Name: Smith Email: attsmith@grr.la

Contact Information:

First Name: Attorney Last Name: Parker Email: attparker@grr.la

Contact Information:

First Name: Family Last Name: Member Email: familymember@mailinator.com

Contact Information:

First Name: Last Name: Email:

Court information

Is the use of Soberlink ordered by the Court? Yes

If Yes, please enter the name of the County and Presiding Judge:[5] Name of County: County Name of Judge: Presiding Judge

Initials JR JR

Initials MR MR

[5] Presiding Judge may contact Soberlink and obtain information regarding this Agreement.

SOBERLINK

Level 2 Family Law Monitoring Program Agreement

AGR-FLM2-23-002

FAMILY LAW MONITORING PROGRAM AGREEMENT—MONITORED CLIENT/CONCERNED PARTY COVENANTS

As an express condition of purchasing and/or using the Soberlink device, the Monitored Client and Concerned Party (collectively "we"), agree to cooperate fully with all Monitoring Program requirements laid out in this Agreement (including the Program Setup Options and Monitored Client/Concerned Party Covenants) and the General Terms and Conditions below and which are available at www.soberlink.com/general-tc.

We understand that failure to use the device as instructed in this Family Law Monitoring Program Agreement may be interpreted as an attempt to conceal alcohol use and result in consequences carried out by Interested Parties and third parties. Other than as set forth in this Agreement, Soberlink shall not be required to perform any action in regard to non-compliance. We further understand, agree to, and warrant each of the conditions set forth below.

Program Conditions

1. We acknowledge and agree that the Soberlink device is our chosen method of alcohol monitoring. We also understand that the device uses fuel cell technology, which has been widely accepted as a valid means of alcohol detection in human breath.

2. Any Involved Party may request copies of this Agreement, any amendments, Reports, Evaluations (as defined in Section 6), and other relevant documentation accompanied by a notarized affidavit from a Soberlink custodian of records ("Authenticated Test Results") without any further authorization for a fee of $50 per request. Alternatively, any Involved Party may request copies of such material, without a notarized affidavit ("Non-Authenticated Test Results"). A fee of $25 per request will be charged for Non-Authenticated Test Results in the Basic and Plus Plans. Requesting parties in the Premium Plan will be entitled to request Non-Authenticated Test Results free of charge. Payment for Non-Authenticated Test Results and Authenticated Test Results are the responsibility of the requesting Involved Party. All Authenticated Test Results and/or Non-Authenticated Test Results may be sent by email to all Involved Parties. By entering into this Agreement, the Monitored Client and Concerned Party (and Contacts, if any) waive any and all objections as to foundation and authenticity to the extent permitted by governing law as it relates to any legal proceeding that is the subject of this Agreement. It is the mutual intent of the Monitored Client and Concerned Party that Authenticated Test Results may be utilized in the subject legal proceeding without the need for a subpoena, service of process, or custodian of record testimony.

3. Any changes to the Monitoring Program that are not initiated by Soberlink, including but not limited to, changing, adding, or removing the Involved Parties and time changes for scheduled tests, must be agreed upon by both the Monitored Client and the Concerned Party. We further understand that changes may take up to 72 hours to be implemented. Soberlink reserves the right to approve or decline any requested changes and/or updates.

4. Contacts may update their Alert & Report settings, and their contact information at any time without consent from the Monitored Client or Concerned Party.

5. At any time, Involved Parties may request that Soberlink formally evaluate one or more related series of positive tests ("Evaluation"). Evaluations will be emailed to all Involved Parties, generally within two business days of the request. Evaluations are subject to a $50 fee paid by the requesting party.[6] To request an Evaluation, contact the Compliance Department at compliance@soberlink.com.

6. If a Soberlink device is exchanged for a replacement under a return merchandise authorization ("RMA") based on claims of a device malfunction and the RMA inspection deems "no problem found," a service fee of up to $150 (plus shipping and handling) will be charged to the requesting party. Further, the requesting party will be held responsible for the full cost of the replacement device should the device go unreturned or if the returned device has been damaged beyond repair and/or deemed "out of warranty" upon inspection. Involved Parties may request information regarding the condition of a device that has been returned under an RMA.

7. Involved Parties are encouraged to utilize the process set forth in Section 2 to obtain Authenticated Test Results. To the extent Soberlink is requested or required to appear for deposition, trial, arbitration, or any other legal proceeding, the party requesting or compelling such appearance shall be required to tender to Soberlink all costs and expenses related to such appearance including, but not limited to, all travel expenses incurred in attending or testifying and the reasonable compensation for loss of time in accordance with applicable law. Nothing herein is intended to serve as an agreement by Soberlink to attend or testify any legal proceeding without its further agreement and availability. Soberlink or any of its employees or representatives may not be designated as an expert unless expressly authorized by Soberlink. For pricing and to request testimony services, contact the Compliance Department at compliance@soberlink.com.

Initials JR

Initials MR

General Disclosures

8. Human review may be necessary to confirm identity of the Monitored Client, and if identity cannot be confirmed, a retest may be requested following the submitted test in question.
   NOTE: Any Involved Party may request a Report that includes test photos.

9. Any attempt to trick or beat the Soberlink device will be considered a Tamper and will be reported to all Involved Parties. The detection of tampers does not occur in real time and may not be reported until several days or weeks after the occurrence.
   NOTE: Any efforts to defeat the Soberlink device may result in suspension and/or termination of monitoring services.

[6] Evaluations are not subject to a fee for Involved Parties of a Premium Price Plan.

SOBERLINK

Level 2 Family Law Monitoring Program Agreement

AGR-FLM2-23-002

10. "Storing" is a feature of the Soberlink Cellular device which allows tests to be stored and uploaded later if there is poor or loss of cellular coverage at the time the test is submitted. The Storing feature is enabled by default.
NOTE: Storing can affect the real-time nature of Soberlink Alerts and Reports.

11. Soberlink is unable to guarantee text message and email delivery due to carrier-related issues and other factors out of Soberlink's control.

12. Soberlink requires a monthly monitoring fee to be paid to keep the Soberlink device activated. Removing the payment method at any time may result in immediate suspension.

13. To terminate services, the party responsible for payment, as indicated in this Agreement, must email support@soberlink.com with the request. All Involved Parties will receive notice when services have been terminated. Soberlink bills arrears, meaning that if services are canceled in the middle of the month, the final payment will be due at the beginning of the following month. Service reactivation is subject to a $25 fee.

14. If the Monitored Client fills out and signs a new Monitoring Agreement with a different Concerned Party, the newest Agreement may, at Soberlink's discretion, supersede the previously signed Agreement. Further, this will result in the termination of services in accordance with the previously signed Agreement, and a new testing program will begin.

15. In the event an account becomes 15 days past due for non-payment, the Monitored Client will be suspended. All Involved Parties will receive notice if the account becomes suspended due to non-payment. While suspended, the Monitored Client will not be allowed to submit tests until and if the suspension is lifted. When an account becomes 45 days past due for non-payment, Soberlink will terminate services and may send the account into collections.

16. Soberlink reserves the right to terminate services for non-compliant activity, violation of any term or provision of this Agreement, and/or use of the Soberlink device for a purpose inconsistent with this Agreement, upon 10 days' prior written notice. Soberlink further reserves the right to terminate services for any reason, including convenience, upon 10 days' prior written notice. Nothing herein shall prevent Soberlink from immediately suspending service for any reason including, but not limited to, violation of Soberlink protocols, intentional violation of any term or provision of this Agreement, tampering, violation of any applicable law, verbal or physical abuse, threat(s) or harassment of Soberlink, its representatives, vendors, partners or affiliates, or any person or entity party to, or connected with, this Agreement or the Services.

17. Any Involved Party may contact Soberlink for information regarding this Agreement and the monitoring related thereto.

18. Soberlink Monitoring does not constitute a clinician/patient relationship. Testing records, including Authenticated Test Results and Non-Authenticated Test Results, generated while testing in accordance with this Agreement, or other information related to the use of the device are generally not considered "Protected Health Information" as defined in the Health Insurance Portability and Accountability Act of 1996 nor is the information protected by the Health Insurance Portability and Accountability Act of 1996. All violations or activity related to monitoring or use of the device may be provided to all Involved Parties pursuant to this Agreement. Should you have any questions as to what information may be shared pursuant to this Agreement please contact the Compliance Department at compliance@soberlink.com.

19. Soberlink shall seek to comply with all governing state and federal law as it relates to issuance of subpoenas or service of process related to use of the Soberlink device and/or the Monitoring Program. Please note that subpoenas issued from out-of-state must comply with Interstate and International Depositions and Discovery Act (California Code of Civil Procedure Sections 2029.100 -2029.900).

20. Soberlink Monitoring is not an emergency service; if you have an emergency, you should call 911 or local law enforcement.

21. Soberlink will not be required to provide details regarding any voice or electronic communications between Soberlink and other parties.

Initials
JR
JR

Initials
MR
MR

Further, the Monitored Client acknowledges, agrees to, and warrants each of the following:[7]

Testing Procedures

22. I understand that Soberlink will not activate my device or allow me to submit tests until all required documents have been signed and my user account has been completed. Further, I understand that it is my responsibility to call Soberlink at (714) 975-7200 during business hours to activate my device, and I will be asked to submit a test upon activation.

23. I will subscribe to receive Soberlink text messages and understand that failure to do so may result in an unsuccessful Monitoring Program.

[7] All Involved Parties should familiarize themselves with Testing Procedures.

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24. I understand that it is my responsibility to find adequate cellular or Wi-Fi coverage to successfully submit all tests. The Soberlink Cellular device uses a built-in cellular network to wirelessly transmit test results. The Soberlink Connect device must connect to an Apple or Android phone or tablet to wirelessly transmit results.

25. I will refrain from eating, drinking (other than plain water), and smoking for at least 20 minutes prior to submitting all tests. I will not consume or use products that contain alcohol prior to submitting tests and/or handling the Soberlink device. I will remove everything from my mouth and rinse my mouth out with water prior to submitting a test. Failure to do so may result in an inaccurate BAC reading or may be interpreted as an attempt to defeat the Soberlink device.

26. While testing I will not obstruct the view of any portion of my face I will remove any sunglasses, hats, or any other items that may obstruct my face while testing. I will take all tests in well-lit areas while standing or sitting upright (not lying down) with my eyes open. I will always use the provided Soberlink device mouthpiece and will not touch the mouthpiece while testing. I will wear clothes while submitting tests so that test photos do not contain nudity. I understand that Soberlink has the right to overturn the status of a test from Compliant to Non-Compliant at any time if testing procedures are not followed.

27. I will not use the Soberlink device while driving or operating heavy machinery.

28. After testing, I will check the Soberlink device or Soberlink Connect app to confirm that my test was successfully submitted. I will not simply assume the test was sent. If prompted to retest, I will retest at the times indicated on my Soberlink device or the Soberlink Connect app and in the notification text message. Failure to retest as instructed will be considered non-compliance.

Initials JR JR

Initials MR MR

Protecting Equipment

29. I will always use the protective case to store the Soberlink device and mouthpiece(s) when not in use. I will keep my Soberlink device and mouthpiece(s) away from all alcohol-containing and non-alcohol-containing products.

30. I understand that if alcohol is detected by the Soberlink device, whether from the consumption of alcohol or cross-contamination, that event may be considered non-compliance and may result in adverse consequences; those consequences are not to be determined by Soberlink.

31. I will keep and use my Soberlink device in normal operating temperatures (32° - 122° F) to ensure proper functioning.

32. Soberlink devices require recalibration when 1500 tests have been submitted. Soberlink will notify the Monitored Client by text message when there are100 tests remaining. When a device is due for recalibration, it is the Monitored Client's responsibility to contact Soberlink to request a replacement device. Soberlink will send a replacement device to the Monitored Client with a prepaid return shipping label to send the device that needs to be recalibrated back to Soberlink. The Monitored Client will be required to contact Soberlink upon receipt of the replacement device for activation. If the Monitored Client fails to activate a replacement device before reaching the 1500 test limit, the monitoring account will be suspended until a recalibrated device is activated. While suspended, the Monitored Client will not be allowed to submit tests. The Monitored Client will be held responsible for the full cost of the replacement device should the device go unreturned or if the returned device has been damaged beyond repair and/or deemed "out of warranty" upon inspection.

Initials JR JR

Initials MR MR

SIGNER 1

We have reviewed, understand, and will abide by the terms of this Agreement and the General Terms and Conditions available below and at www.soberlink.com/general-tc.

I am the: (•) Monitored Client ( ) Concerned Party

Signature: Jordan Reynolds
Jordan Reynolds (Apr 20, 2023 10:16 PDT)

Name: Jordan Reynolds
jreynolds22@mailinator.com

Apr 20, 2023

SIGNER 2

I am the: ( ) Monitored Client (•) Concerned Party

Signature: Morgan Reynolds
Morgan Reynolds (Apr 20, 2023 10:18 PDT)

Name: Morgan Reynolds
mreynolds@mailinator.com

Apr 20, 2023

GENERAL TERMS AND CONDITIONS (cont'd on following pages)

SOBERLINK

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PARTIES

By using SOBERLINK HEALTHCARE LLC's and its affiliates, subsidiaries, parents, sister concerns and related companies ("SOBERLINK", "SOBERLINK® ", "us", "our" or "we") websites, SOBERLINK's Monitoring Web Portal, devices, applications including, but not limited to, Soberlink's monitoring services, testing capabilities, account management features and applications (collectively, the "Service(s)"), or by agreeing to these General Terms and Conditions" ("T&Cs"), you (the "customer", "client", "Concerned Party" (where applicable) or the person who is using the Soberlink® device and/or Service (the "User")) agree to be bound by these T&Cs. Except as expressly set forth herein, we may modify the T&Cs at our sole discretion and such modification shall be effective upon the earlier of notice to you or revised T&C's being posted at http://www.soberlink.com/general-tc. You accept modification to the T&Cs by continuing to use the SOBERLINK® device, by continuing to use our Service, or by continuing to pay for the SOBERLINK® device.

EXPECTATIONS

The SOBERLINK® device is intended to be utilized as an assessment tool and screening device. Unless specifically agreed in writing by SOBERLINK, we will not analyze or interpret the testing results, reporting histories, or provide an opinion as to whether the User had consumed alcohol. It is the responsibility of the User, if required, to retain a monitoring agency or third party to review, analyze, interpret or adjudicate testing results and related data. There is a direct relationship between the concentration of alcohol in the blood and in the breath. Consumed alcohol is absorbed in the blood stream and exchanged to the breath in the deep lung region. Through a calculated conversion, the SOBERLINK® device measures alcohol in the body by its concentration in the breath, also known as breath alcohol concentration ("BrAC"). The concentration of alcohol is subject to the User's compliance with the Precautions and may further be subject to applicable procedures set by the Concerned Parties, monitoring agencies and governing authorities. BrAC depends on a number of variables including, but not limited to, the amount of alcohol consumed, environmental influences, the rate at which alcohol was consumed, body size, age, physical health and the rate of which the User metabolizes alcohol.

CALIBRATION

The SOBERLINK® device utilizes a professional grade fuel cell sensor. The SOBERLINK® device is calibrated during manufacturing using advanced alcohol calibration equipment. Known alcohol concentrations are passed through the fuel-cell sensor to set baseline values for testing. The accuracy of breathalyzers can fluctuate after twelve (12) months of normal use, depending on operating conditions and the number of tests performed. The SOBERLINK® device tracks the number of tests performed. Soberlink will notify the User, Concerned Party and/or other authorized Contacts when the SOBERLINK® device is ready for recalibration.

PRECAUTIONS

1. Wait at least twenty (20) minutes after drinking, eating, or smoking before using the SOBERLINK® device. Failure to observe this waiting period may cause inaccurate readings and damage the SOBERLINK® device's fuel cell sensor.
2. Avoid using the SOBERLINK® device in the presence of substances that contain methyl alcohol, isopropyl alcohol, or any other outside agent that contains alcohol or similar substances or ingest such substances twenty (20) minutes before using the SOBERLINK® device. These substances or agents may interfere with test results and yield a false positive, or unreliable, report. In most instances, positive test results attributed to a foreign substance or outside agent will dissipate shortly after the initial test, and subsequent retesting will yield test results of 0.00 BrAC. In the event of a positive test result believed to be caused by a foreign substance or outside agent, User must continue to retest as prompted until there is a compliant result. Failing to retest as prompted may be considered a violation of testing procedures. Examples of common foreign substances or outside agents that may influence test results include but are not limited to: certain prescription drugs; certain medications and herbal remedies; medicinal alcohol; household cleaners and disinfectants; lotions; body washes; perfumes; colognes; toothpaste; breath fresheners; hand sanitizers; or other alcohol-based hygiene products and inhalants.
3. Prevent outside agents such as perfume, alcohol-based substances or hand sanitizers from being stored near the SOBERLINK® device at all times.
4. Do not blow smoke, food, or liquids into the SOBERLINK® device, as this will damage the sensor.
5. Do not tamper with, obstruct, or damage the SOBERLINK® device.
6. Remove sunglasses and headwear during the testing process.
7. Remain standing during the testing process.
8. Hold the SOBERLINK® device eye level and look directly into the device's camera lens.
9. Do not hold onto the SOBERLINK® device's mouthpiece during testing or permit any item to block User's ability to breathe into the SOBERLINK® device.
10. Do not test in areas with strong winds, smoke, or in areas where large amounts of alcohol is being consumed.
11. Do not use the SOBERLINK® device in temperatures below 32 ºF or above 122 ºF.
12. If a breath test result is out of compliance, the SOBERLINK® device will warn of retest requirement and the User will receive a text message prompting to retest.

DISCLAIMERS

1. SOBERLINK and any and all manufacturers, retailers, distributors and sellers of SOBERLINK® devices make no warranties, express or implied, as to the ability of the SOBERLINK® device to determine whether a user of this device is legally intoxicated and SOBERLINK expressly disclaims any liability for incidental, special, or consequential damages of any nature.
2. Decisions and/or actions based upon the reading of the SOBERLINK® device shall be entirely at the User and Concerned Party's (if any) own risk.
3. SOBERLINK and any and all manufacturers, retailers, distributors, service providers and sellers of SOBERLINK® devices make no warranties, express or implied, that any modification or adjustment thereof is a legal protector or evidence or defense against any police or public procedure or judicial or investigative proceedings in any jurisdiction.
4. SOBERLINK and any and all manufacturers, retailers, service providers or sellers of SOBERLINK® devices assume no responsibility for Users who test negative and later show that they are under the influence of alcohol or are proven to be intoxicated by alcohol.
5. SOBERLINK incorporates by this reference all exclusions, limitations and disclaimers set forth in the Warranty Section below and any additional exclusions, limitations and disclaimers that may be promulgated by us from time to time.

PAYMENT

Payment Methods

Acceptable forms of payment to SOBERLINK are electronic funds transfer ("EFT" or "ACH") or credit or debit card transactions (EFT, ACH and credit or debit card transactions collectively, "Payment Method"), unless otherwise agreed by Soberlink. You agree to provide current a Payment Method in order to utilize the SOBERLINK® device and Service and permit us to charge against such Payment Method for the use of the SOBERLINK® device or the provision of the Service. Approved credit or debit card companies may be modified at our sole discretion. If funds to which you are not entitled are deposited into your account, you authorize the initiation of a correction (debit) entry electronically or by any other commercially accepted method. If your Payment Method changes, you agree that you will promptly update your Payment Method information and provide any additional authorization that may be necessary to process your payment. If a payment is not successfully settled, due to expiration, insufficient funds, or otherwise, and you do not edit your Payment Method or cancel your account (see, "Cancellation Policy" below), you remain responsible for any uncollected amounts and authorize us to continue billing the Payment Method, as it may be updated. This Payment Method authorization is to remain in full force and effect until SOBERLINK has received written request of termination, upon which we are granted thirty (30) days or reasonable opportunity to complete your request.

Recurring Billing

By the use of the SOBERLINK® device and/or the provision of the Service, and providing or designating a Payment Method, you authorize SOBERLINK to charge you periodical and/or recurring monthly fees, and any other charges you may incur in connection with your use of the Service to your Payment Method, until cancelled in writing by you. You acknowledge that the amount billed each month may vary from month to month for reasons that may include differing days per month, promotional offers, and/or changing or adding a Service, and you authorize us to charge your Payment Method for such varying amounts, which may be billed monthly in one or more charges.

Fees

The following schedule of fees is listed at a base rate and may be overridden by any written agreement between you and SOBERLINK. Any base rate may be modified, terminated or discontinued at our sole discretion at any time without notice. Any modification, termination or discontinuation shall be effective upon the billing cycle immediately following the modification, termination or discontinuation.

Fee Name	Description	Base Rate
Daily Monitoring Fee	Includes all web portal features, automation, cloud storage and future upgrades. A fee is incurred for every day the SOBERLINK® device is active on the monitoring web portal or as otherwise provided in any agreement between you and us.	See Agreement
Recalibration Fee	At 1,500 tests the SOBERLINK® device can be recalibrated by SOBERLINK. Soberlink will notify the User, Concerned Party and/or other authorized Contacts when the SOBERLINK® device reaches 1,500 tests.	See Device Replacement Fee
Calibration Check Fee	Applied when a calibration check is requested by the User and the SOBERLINK® device tests within the accuracy tolerance. If the SOBERLINK® device tests outside of the accuracy tolerance, we will waive the calibration check fee and the SOBERLINK® device will be recalibrated at no charge.	$150 + s&h
RMA Inspection Fee	If a SOBERLINK® device is returned to SOBERLINK under a return merchandise authorization ("RMA") and the RMA inspection deems "No Problem Found" the inspection fee will be charged to the User's account.	$150 + s&h
Restocking Fee	If a SOBERLINK® device is returned to Soberlink within thirty (30) days of purchase, a Restocking Fee will be charged to the User's account.	$100 + s&h
Device Replacement Fee	If a SOBERLINK device is not returned within 30 days after an advance exchange RMA order has been shipped, or the device is damaged beyond repair and not covered under warranty, then a Device Replacement Fee will be charged to the User's account.	Market Value of Advanced Device + s&h

Archiving Policy

A SOBERLINK® device can be archived on the web portal by a User with applicable permissions, or by written request made to Soberlink. Archiving will suspend the daily monitoring fee and temporarily disable the device from submitting test results to the web portal. Any obligation for payment of Daily Monitoring Fee during this period shall be subject to any agreement between you and us. User and/or Concerned Parties shall continue to be responsible for all financial commitments related to the Service or SOBERLINK® device including, but not limited to, any and all early termination fees, contractual agreements and minimum use period.

Zero Usage Policy

If a SOBERLINK® device has been archived and unused for ninety (90) days or longer, Soberlink shall have the authority to disconnect the cellular connection of the SOBERLINK® device without notice to User, any Concerned Party or any authorized Contact. If the device has been archived for one (1) year or less a Reactivation Fee of $100 may be applied. After one (1) year a purchase of a replacement device may be required.

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Cancelation Policy
In order to cancel the Services of a SOBERLINK® device, a written request must be made by the party responsible for payment to SOBERLINK at support@soberlink.com or by mail to Soberlink Healthcare LLC, Attn: Accounts, 16787 Beach Boulevard, #211, Huntington Beach, CA 92647. This request will terminate any cellular and data plan on the SOBERLINK® device, which will disconnect all device communication to the web portal. User and/or Concerned Parties shall continue to be responsible for all financial commitments related to the Service or SOBERLINK® device including, but not limited to, any and all early termination fees, contractual agreements and minimum use period. If the customer chooses to reactivate the SOBERLINK® device after cancelling Service, a Reactivation Fee may apply.

WARRANTY

One Year Limited Warranty
SOBERLINK's warranty obligations for the SOBERLINK® device (the "Limited Warranty") are expressly limited to the following: SOBERLINK warrants the SOBERLINK® device against defects in materials and workmanship under normal use for a period of ONE (1) YEAR from the date of purchase by the original end-user purchaser or the date the SOBERLINK® device was first put in use, whichever date is earlier (the "Warranty Period"). Except as provided herein, SOBERLINK provides the SOBERLINK® device "as is." If a defect arises and a valid claim is received by SOBERLINK within the Warranty Period, SOBERLINK will, at its option, either (1) repair the SOBERLINK® device, (2) exchange the SOBERLINK® device with a SOBERLINK® device that is new or which has been manufactured from new or serviceable used parts and is at least functionally equivalent to the original SOBERLINK® device, or (3) refund the purchase price of the SOBERLINK® device. When a refund is given, the SOBERLINK® device for which the refund is provided must be returned to SOBERLINK and becomes SOBERLINK's property. This Limited Warranty is limited to the original end-user purchaser and is not transferable to, or enforceable by, any subsequent owner. Any such transfer shall void the Limited Warranty provided hereunder. This Limited Warranty does not apply: (a) to consequences caused by accident, abuse, tampering, misuse, flood, fire, earthquake or other external causes; (b) to consequences caused by operating the SOBERLINK® device outside the permitted or intended use described by SOBERLINK; (c) to consequences caused by, or arising from, service, repair, modification or alteration performed by anyone who is not a representative of SOBERLINK or a SOBERLINK Authorized Service Provider; (d) to a SOBERLINK® device or part that has been modified to alter functionality or capability without the written permission of SOBERLINK; or (e) by the failure to report or to timely report testing results as a result of any telecommunication related problems, whether caused by third parties, the User, or SOBERLINK®. No SOBERLINK Service Provider, manufacturer, distributor, re-seller, agent, representative, or employee is authorized to make any modification, extension, or addition to the Limited Warranty. If any term is held to be illegal or unenforceable, the legality or enforceability of the remaining terms shall not be affected or impaired.

Exclusions, Limitations, and Disclaimers
SOBERLINK makes no warranties, express or implied, as to the ability of the SOBERLINK® device to determine whether, or the extent to which, a User's mental or physical functioning, or judgment, may be impaired, including whether the User is intoxicated under any definition of that word. SOBERLINK expressly disclaims any liability for direct, indirect, incidental, special, or consequential damages of any nature under any legal theory. Any act or failure to act based on a reading from this device shall be at the User's own risk or upon those who rely upon such reading. SOBERLINK assumes no responsibility for consequences to, or of, Users who use this device and later are shown to have been under the influence of alcohol or have had their judgment or any mental or bodily function impaired by alcohol. Correlation between breath alcohol content and blood alcohol concentration depends on many variables, including environmental factors (such as air quality, wind, humidity, temperature, etc.) and health conditions of the User. A low BrAC reading does not mean that the User's physical or mental performance or judgment can respond to an emergency. The concentration of alcohol in the blood of a User cannot be exactly determined by using a breath alcohol-screening device. SOBERLINK does not warrant that the operation of the device will be error-free. SOBERLINK is not responsible for any consequences arising from the failure to follow instructions related to the device's use. Because of the variables involved in the dissipation of alcohol consumption, individual metabolism, and self-administration, the User and associated third parties agree: (1) not to hold SOBERLINK or its agent and representatives, the manufacturer, dealer, wholesaler, or distributor, responsible for the consequences of any decision, based on the use of this device to operate a vehicle, boat, or aircraft or other equipment; and (2) to hold SOBERLINK or its agent and representatives harmless from the claims of others arising out of any such decision.

TO THE EXTENT PERMITTED BY THE LAW, THIS WARRANTY AND THE REMEDIES SET FORTH ABOVE ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, REMEDIES AND CONDITIONS, WHETHER ORAL OR WRITTEN, STATUTORY, EXPRESS OR IMPLIED. AS PERMITTED BY APPLICABLE LAW, SOBERLINK SPECIFICALLY DISCLAIMS ANY AND ALL STATUTORY OR IMPLIED WARRANTIES OR MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND WARRANTIES AGAINST HIDDEN OR LATENT DEFECTS. IF SOBERLINK CANNOT LAWFULLY DISCLAIM STATUTORY OR IMPLIED WARRANTIES, THEN TO THE EXTENT PERMITTED BY LAW, ALL SUCH WARRANTIES SHALL BE LIMITED IN DURATION TO THE DURATION OF THE EXPRESS WARRANTY AND TO THE REPAIR OR REPLACEMENT SERVICE AS DETERMINED BY SOBERLINK. IN ITS SOLE DISCRETION.

EXCEPT AS PROVIDED IN THIS WARRANTY, AND TO THE MAXIMUM EXTENT PERMITTED BY LAW, SOBERLINK IS NOT RESPONSIBLE FOR DIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES UNDER ANY LEGAL THEORY, INCLUDING BUT NOT LIMITED TO: LOSS OR USE; LOSS OF REVENUE OR INCOME LOSS OF ACTUAL OR ANTICIPATED PROFITS (INCLUDING LOSS OF PROFITS FROM A CONTRACT), LOSS OF THE USE OF MONEY LOSS OF ANTICIPATED SAVINGS; LOSS OF BUSINESS; LOSS OF OPPORTUNITY; LOSS OF GOODWILL; OR LOSS OF REPUTATION. Some countries, states, and provinces do not allow the exclusion or limitation of incidental or consequential damages or allow limitations on how long an implied warranty or condition may last, so the above limitations or exclusions may not apply to you. This warranty gives you specific legal rights, and you may also have other rights that vary by country, state, or province. This Limited Warranty is governed by and construed under the laws of the country in which the product purchase took place.

Obtaining Warranty Service
If you feel that your device requires warranty service, please follow these instructions: Obtain a Return Merchandise Authorization ("RMA") number by calling 714-975-7200 or by emailing support@soberlink.com. When shipping the device back to the designated SOBERLINK address, please package the SOBERLINK® device carefully and ship using a major carrier (UPS, FedEx, USPS, etc.). To ensure proper credit for a returned item, be sure to obtain a delivery confirmation on the return shipment. If we do not receive the Soberlink® device and you do not have proof of delivery to us, you and/or the Concerned Party (if any) may be assessed a replacement cost. Please include the following information with your returned device:

- Your RMA number (issued by SOBERLINK)
- Name, address, and phone number as stated at the time of order
- A copy of your original sales receipt (if applicable)

DISPUTE RESOLUTION AND ARBITRATION

WE EACH AGREE THAT, EXCEPT AS PROVIDED BELOW, ANY AND ALL CLAIMS OR DISPUTES IN ANY WAY RELATED TO OR CONCERNING THESE T&C's, OUR PRIVACY POLICY, THE SERVICES, SOBERLINK® DEVICES OR PRODUCTS, INCLUDING ANY BILLING DISPUTES, WILL BE RESOLVED BY BINDING ARBITRATION BEFORE A SINGLE ARBITRATOR OR IN SMALL CLAIMS COURT RATHER THAN IN A COURT OF GENERAL JURISDICTION. Arbitration is more informal than bringing a lawsuit in court. Arbitration uses a neutral arbitrator instead of a judge or jury and is subject to limited review by courts. Any arbitration will take place on an individual basis; class arbitrations and class actions are not permitted. The types of disputes and claims you and we agree to arbitrate are intended to be broadly interpreted. It applies, without limitation (except as expressly provided herein as it relates to small claims proceeding and opt-out rights), to:

- claims arising out of, or relating to, any aspect of the relationship between you and us, whether based in contract, tort, statute, fraud, misrepresentation, or any other legal theory
- claims related to these T&Cs, the SOBERLINK® devices, or the provision of the Services or any advertising, marketing or representation related thereto
- claims that arose before these T&C's or any prior terms and conditions (including, but not limited to, claims relating to advertising)
- claims that are currently the subject of purported class action litigation in which you are not a member of a certified class
- claims related to an alleged violation of your privacy, disclosure of personal information or alleged violation of any law or act related to any other agreement or contract entered into between you and us
- claims that may arise after the termination, modification, revision, amendment or updating of the T&Cs.

The American Arbitration Association ("AAA") will arbitrate all disputes. This arbitration provision includes any claims against us relating to Services or SOBERLINK® devices provided or billed to you or used by you that may have been provided by third parties (such as our suppliers, distributors, dealers, Service Providers or third-party vendors) whenever you also assert claims against us in the same proceeding. We each also agree that the provision of Service to you affects interstate commerce so that the Federal Arbitration Act and federal arbitration law apply (despite the application of any choice of law). THERE IS NO JUDGE OR JURY IN ARBITRATION, AND COURT REVIEW OF AN ARBITRATION AWARD IS LIMITED. THE ARBITRATOR MUST FOLLOW THIS AGREEMENT AND CAN AWARD THE SAME DAMAGES AND RELIEF AS A COURT (INCLUDING ATTORNEYS' FEES).

Claim Procedure
For all disputes, whether pursued in court or arbitration, you must first give us an opportunity to resolve your claim by sending a written description of your claim to us at Soberlink Healthcare LLC, Attn: Dispute Resolution, 16787 Beach Boulevard, #211, Huntington Beach, CA 92647. We each agree to negotiate in good faith. If the arbitration provision applies or you choose arbitration to resolve your dispute, then either you or we may start arbitration proceedings. You must send a letter requesting arbitration and describing your claim or send a form Notice of Dispute ("Notice") to Soberlink Healthcare LLC, Attn: Dispute Resolution, 16787 Beach Boulevard, #211, Huntington Beach, CA 92647 (the "Notice Address") to begin arbitration. You may download or copy a form Notice from http://www.soberlink.com/wp-content/uploads/2015/09/SLHC-Notice-of-Dispute.pdf. The Notice must (a) describe the nature and basis of the claim or dispute and (b) set forth the specific relief sought. In order to initiate arbitration against you, Soberlink must send written Notice to you at the address you provide to us or an authorized SOBERLINK Service Provider.

See the complete "General Terms and Conditions" at
soberlink.com/professionals-family-law
Go to Resources Created by Experts

Soberlink Best Practices: Based on an Expert Panel

When formulating a parenting agreement, courts follow the general principle that the best interests of the child should govern custody and parenting time. While the needs of the parents are also important, Family Law courts place a greater priority on the child's development and adjustment.

Many times, in Family Law cases, alcohol monitoring is ordered. In the past, random Urine Ethyl Glucuronide (EtG) testing was the only way courts could test an individual's sobriety. However, random EtG tests can only be ordered a few times a month, causing many drinking events to go undetected. Furthermore, EtG test results are not in real-time, which means no immediate action can be taken if alcohol use occurs during parenting time. Fortunately, in 2011, Soberlink developed an innovative alcohol monitoring system that allows for real- time testing multiple times a day, either seven days a week or only during parenting time.

The new alcohol monitoring technology proved to be extremely advantageous for Family Law, where reliability and real-time results are key for child safety. However, as with any new technology, some confusion may occur during implementation. Many times, court orders for Soberlink monitoring are written with the same language as the older method of random EtG tests, which would not be successful with the Soberlink system.

Understanding that guidance was needed, Soberlink brought together a group of Addiction Treatment experts who formed a panel to determine the most effective way to use Soberlink. The panel's results were published in the Mar/Apr 2017 issue of the Journal of Addiction Medicine.

The purpose of this document is to provide Soberlink alcohol monitoring guidelines for Family Law, using the panel's expert insight on the following topics:

- Test Frequency and Program Duration
- Random vs. Scheduled Testing
- Responding to a Missed Test
- Responding to a Positive Test

Test Frequency and Program Duration

The Myth

"The parent should be set up with as many tests per day as possible to ensure sobriety."

This is actually the most detrimental and common mistake professionals make when setting up testing schedules. While it seems like an individual should test as many times as possible, a schedule that

includes more than four tests per day can become a source of anxiety that negatively influences parenting time.

Soberlink's technology will help parents form healthy habits. Setting up a testing schedule is a good way to establish an accountability structure that will keep the parent on track. However, if a parent is overwhelmed with required tests, this accountability structure can start to feel more penalizing than helpful, which can be detrimental to the program.

Furthermore, because alcohol use disorder is most effectively treated with ongoing monitoring, the testing schedule needs to be sustainable over a long period of time. In fact, the consensus from the expert panel suggested that people should use Soberlink for a minimum of one-year when beginning recovery. The one-year baseline also applies to Family Law in that, typically, the person being mandated to use Soberlink is trying to manage or stop their drinking for the first time. Because this will be an ongoing process, requiring the parent to take an excessive number of tests is counterproductive and will be intrusive to their time with the child.

The Expert Panel's Recommendation

The panel came to unanimous consensus, recommending three tests per day at the start of a Soberlink program. Furthermore, to promote progress and growth, the panel agreed that the number of daily tests could be reduced to two tests after a period of favorable results. The panel also noted that if a person's circumstances were more challenging, such as an increased exposure to environmental triggers, a maximum of four tests per day would be acceptable. However, this should also be reduced over time as attitudes and habits improve.

Random vs. Scheduled Testing

The Myth

"It is better to require random tests and surprise the parent instead of setting up a test schedule."

It is accepted that EtG tests should be administered randomly and periodically. However, Soberlink testing should be viewed from a different perspective. EtG tests are random because there are only two to three tests required per month. Soberlink, which facilitates up to 120 tests per month, simply will not work if set up with random testing. Random tests that happen multiple times a day are overwhelming and will likely result in excessive missed tests and more anxiety for the parents.

The stress of random testing multiple times a day is dramatically more overwhelming than the stress of two or three random EtG tests a month. While it might seem like a good strategy to attempt to catch the parent "off guard" with random tests, this type of scheduling will add more strain to the relationship between parents, which is not beneficial for the child.

The Expert Panel's Recommendation

With regard to scheduling, the expert panel came to a unanimous consensus that scheduled testing at agreed upon times is the best method for alcohol monitoring. The panel agreed to a test schedule of two to three tests per day with a 2-hour and 15-minute test window. The panel

determined this type of scheduling to be the most convenient option for a parent who will be monitored during the recommended 12 months of use.

Responding to a Missed Test

The Myth

"Any instance of missing a test should be treated as a drinking event."

A missed test is a scheduled test that is not submitted within the agreed upon timeframe. It is important to note that missed tests happen quite often and there can be a number of reasons to excuse a missed test. For example, a person may have simply forgotten their device at home or were unable to break away from their daily routine to submit a test.

The panel concluded that it may be more valuable to think of instances of missed tests as opportunities to reevaluate the schedule and program needs, request additional testing, or intervene before a full-blown relapse occurs. While a missed test event should be treated with concern, the approach for dealing with it should include some type of communication between the two parties instead of jumping to a hasty conclusion or consequence. The communication and decision on how to handle the missed test should always be in the best interest of the child.

However, if missing tests becomes a regular occurrence, this habit should not be ignored because it can be a serious challenge to any type of monitoring program. Holding someone accountable with agreed-upon consequences is the best way to manage missed tests. Consequences for missed tests may be harsher if there is an excessive number of missed tests in a given month, if the missed tests are back-to-back, or if there is a full day of missed tests without a legitimate excuse.

The Expert Panel's Recommendation

The panel came to a unanimous consensus that missed test events should be dealt with using a rational discussion rather than immediate consequences. The panel further recognized that, though these instances are serious and should be dealt with swiftly and thoroughly, they are not grounds for an immediate change to the parenting plan.

Responding to Positive Tests

The Myth

"Positive tests should result in immediate and harsh consequences."

As serious as a positive test result may be, leading with punishment is not always the best path. In fact, the most beneficial response for the child may be an adjustment to the parenting plan that is appropriate for the situation. Just like with missed tests, using a system of punishment, rather than one of evaluation, will create the hostile environment that is toxic to a parenting plan. A positive test can be seen as an

opportunity to reevaluate parenting for that day, request additional testing, or reduce or eliminate parenting time in the worst-case scenario.

The Expert Panel's Recommendation

The panel unanimously decided that positive test results should be followed by immediate action. In Family Law, it is important that the consequences are in the best interest of the child and decided upon before testing begins. Another factor to consider when establishing the consequences is the BAC levels of the positive events. For example, a .009 BAC is an extremely low threshold for alcohol consumption while a .09 BAC is considered a level in which behavior and judgment are affected.

Each instance of a positive test result varies from person to person and, for this reason the panel stressed the importance of considering the prior history of the person, the point during monitoring when the positive tests occurred (early in the program or after a significant period of sustained sobriety), and whether the parent self-disclosed the drinking episode.

The first instance of a positive test is an opportunity to address the parenting plan and monitoring guidelines to ensure they are effectively meeting the parents' and, more importantly, the child's needs. If more than one positive test occurs, the situation may require more comprehensive intervention.

> *Note: In cases where missed or positive tests result in the immediate removal of custody, Soberlink recommends additional resources to compliment the monitoring program such as an Addiction Professional and the inclusion of a PEth Blood Alcohol test once or twice a month.*

About the Expert Panel & Consensus Paper

The panel was comprised of physicians and experts with extensive experience and knowledge of alcohol use disorders and the addiction treatment industry. They assembled for a full day of collaborative meetings to reach a consensus on the best use of remote alcohol monitoring. A paper of their findings was written and published in the Journal of Addiction Medicine.

All decisions made by the expert panel were reached by organic consensus and have been determined to be the absolute best practices when using Soberlink.

About Soberlink

Soberlink supports accountability for sobriety through a comprehensive alcohol monitoring system. Combining a professional-grade breathalyzer with wireless connectivity, the portable design and state-of-the-art technology includes facial recognition, tamper detection and real-time reporting to designated monitoring parties. With FDA 510(k) medical clearance, Soberlink is the trusted toolin family law, addiction recovery and workplace compliance. Soberlink proves sobriety with the highest level of reliability and accuracy to foster trust and peace of mind.

To learn more about Soberlink, visit www.soberlink.com or call **714.975.7200**.

Justice Speakers Institute
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The admissibility of alcohol test results from the Soberlink Device in Family Law Cases

December 2018

Judge peggy Hora (Ret.), David Wallace, Esq., and Judge Brian MacKenzie (ret.)

Executive Summary

This paper explores the evidentiary standards regarding the admissibility of the Soberlink portable fuel cell alcohol testing device in family law cases involving contested custody and visitation. Our research establishes that the test results are admissible as evidence of alcohol use in such proceedings.

Evidence produced by fuel cell based portable breathalyzers are most commonly used in criminal cases. Family law cases are different. The state is not a party and no allegation of wrongdoing by a parent is required to initiate a case. Nevertheless, concerns about alcohol or other drug use impacting upon the safety of a child frequently arise. Soberlink seeks to address this concern as it relates to alcohol use by making reliable alcohol testing possible at home and at low cost.

The admission of technological evidence in a court proceeding, in the majority of states, is controlled by the United States Supreme Court decision in *Daubert v. Merrell Dow Pharmaceuticals*, 509 U.S. 579 (1993). However, a minority of states still follow the earlier court decision in *Frye v. United States*, 293 F. 1013 (D.C. Cir. 1923). These two standards provide guidelines for determining the admissibility scientific evidence.

With the improvements in both computer and fuel cell technology state courts have recognized that portable fuel cell alcohol testing devices meet both *Daubet* and *Frye* standards. In recent years, an increasing number of appellate courts have upheld the admission of portable fuel cell test results in numerous proceedings

Soberlink is a comprehensive alcohol monitoring system that combines a handheld breath alcohol instrument with wireless connectivity for real-time results and reports. The device has innovative technology which includes facial recognition to confirm identity, along with tamper resistant sensors to ensure the integrity of the breath tests.

The use of the Soberlink device is common in family law courts across the United States. A recent case, *Murphy v. Murphy* 2018 WL 1475587 (2018), found that it has authority to order Soberlink alcohol testing over the objections of a parent as Connecticut law required it in the best interest of the child.

Our research establishes that the Soberlink device is a reliable measurement instrument admissible under both *Frye* and *Daubert* standards that can accurately detect the presence of alcohol so long as the proper foundation is established.

Introduction

The purpose of this paper is to examine the admissibility of Soberlink technology in family law cases involving contested custody and visitation. The Soberlink device is a small handheld fuel cell apparatus that measures breath alcohol.[1]

Evidence produced by fuel cell based portable breathalyzers are most commonly used in criminal cases including in probation violations hearings.[2] These breathalyzers are widely used by law enforcement officials to perform preliminary testing as part of field sobriety tests when there has been a stop for suspected driving while impaired (DUI/DWI).[3] More recently, portable breathalyzers have been used to monitor alcohol use in juvenile dependency cases as part of reunification plans.[4] They are increasingly being used in family courts.[5]

Family law cases are different. The state is not a party and no allegation of wrongdoing by a parent is required to initiate a case.[6] Nevertheless, concerns of one parent about the safety of children while in the care of the other parent frequently arise in family court and often involve allegations of abuse of alcohol and/or other drugs (AOD).[7]

Family court judges routinely carry huge inventories of cases and need to manage overcrowded calendars. There is often very limited time for hearings or trials[8] and judges have few facts to go on other than the testimony of the opposing parties, most of whom are pro se.[9] It is not surprising that family law judges seek some additional factual data upon which they can determine if a parent's AOD use is really a problem, or if an existing order restricting AOD use by a parent is being obeyed.

Families with substance abuse issues may be involved in multiple proceedings including family law, dependency, and criminal cases. In those instances, parents may be referred to multiple services and family courts may end up having a role to play in alcohol assessment and monitoring, albeit different from the criminal or dependency courts.[10]

Some states include specific reference to AOD use or misuse in their family law best interest framework. For example, California Family Code §3011 specifically requires the court, "in making a determination of best interest," to consider "the habitual or continual illegal use of controlled substances, the habitual or continual abuse of alcohol, or the habitual or continual abuse of prescribed controlled substances by either parent."[11] New York's Family Court Act section 1046 provides guidance in this area that focuses more on the connections between AOD misuse and potential child abuse and neglect.[12]

It is not surprising that family law judges seek some additional factual data upon which they can determine if a parent's AOD use is really a problem.

As a result, issues of AOD in contested custody cases routinely get referred to ancillary resources such as custody mediators, psychological evaluators, or AOD treatment providers in the community. Orders based on resulting agreements of the parties or recommendations from such ancillary resources can result in orders that are vague and unenforceable.[13] Some states[14] have enacted statutes that allow AOD testing

of parents in family law; however, it is not uncommon for such statutory authority to impose serious restrictions.[15] Even when testing is legally permissible, it can often be costly and inconvenient.[16] Consequently, many parents find it difficult to comply with testing orders.

Soberlink seeks to address this issue as it relates to alcohol use by making reliable alcohol testing possible at home and at low cost.

Admissibility Of Expert Evidence

The use of experts in the courtroom roughly coincides with the scientific revolution and was not present in any form prior to the seventeenth century.[17] A lay witness was allowed only to provide testimony about matters that they have experienced directly, but an established expert could offer an opinion to a court.[18]

The only criteria for accepting an opinion from an expert was the reputation and qualifications of that expert.[19] This simple criterion persisted throughout the nineteenth century.[20] In response to rapid advancements in scientific research in the early twentieth century, the standards for admissibility of expert evidence[21] began to change radically resulting in 1923 in the decision in *Frye v. United States*.[22]

The Frye Standard

With *Frye*, courts recognized the necessity of going beyond the qualifications of the expert, and inquiring into the quality of the underlying science.[23] The issue in *Frye* pertained to polygraph test results. While there was no question that the witness was a qualified expert in administration and interpretation of polygraphs, the court determined that the reliability of polygraph results had not been sufficiently established in the scientific community to warrant its admissibility as expert evidence. In making this ruling the court required that the substance of the expert's testimony must be derived from a well-recognized scientific principle which is sufficiently established to have gained general acceptance in the particular field to which it belongs. Seventy years later, in 1993, the U.S. Supreme Court set out a more rigorous standard for the admissibility of scientific evidence in *Daubert v. Merrell Dow Pharmaceuticals, Inc.*[24]

The Daubert Standard

The court in *Daubert* recognized that the body of scientific research had become enormous in almost all fields. By expanding the standard of admissibility, scientific evidence could be admissible even though it had not met the "general acceptance" criteria of *Frye*.[25] The court made it clear that "general acceptance' was not a precondition of admissibility. In so doing, however, a rigorous standard of analysis was established in an effort to ensure the validity and reliability of the proffered evidence.

The Soberlink device has been found to be more accurate than EtG testing, with a higher testing compliance rate.

This analysis is to be conducted by trial judges acting as gatekeepers to ensure that expert testimony is truly scientific – that is, derived through the scientific method.

Factors judges can consider in making that determination are:[26]

1. Whether the evidence generally accepted in the scientific community;
2. Whether it has been in a peer-reviewed publication;
3. Whether it has been tested;
4. Whether an error rate has been established and is acceptable;
5. Whether research has been conducted independently of the litigation, or anticipation of the litigation.

Daubert established that reliability is foundational to admissibility, and therefore could not be left to the trier of fact simply as a matter of weight. Two other U.S. Supreme Court Cases followed addressing expert testimony.

In *G.E. v. Joiner,*[27] the court reviewed the erroneous admission of expert testimony and held that when there is no connection between the science relied on by the expert and the conclusion of the expert, it cannot be admitted. The court held that if scientific testimony is erroneously admitted the standard of review is abuse of discretion.

In *Kumho v. Carmichael,*[28] the court held that although *Daubert* dealt specifically with scientific testimony, the gatekeeping function of the judge applies to all expert testimony, whether scientific or non-scientific.

In 2000, one year after the decision in *Kumho v. Carmichael,* the Federal Rules of Evidence (FRE) were amended to codify the holdings of the three *Daubert* cases. It was amended again in 2011 to further clarify the requirements.[29]

Under FRE 702[30] an expert's opinion must be of a scientific, technical or specialized subject that requires specialized knowledge. The opinion must be based on sufficient facts or data, shown to be the product of reliable principles and methods, and that the expert relied on these principles and methods to reach the opinion.

The majority of states have accepted the *Daubert* standard. Only a minority[31] still apply some form of the *Frye* standard.

Portable Fuel Cell Breathalyzer Technology

With the rise of automotive travel in the United States, traffic crashes caused by individuals who were impaired became an increasing problem.[32] Partly in response, Emil Bogen developed a device to test for breath alcohol in 1927.[33] By 1954 technological advances led to the development of the first breathalyzer.[34] However, widespread use of breathalyzers, along with the admission of their results, did not emerge until decades later.[35]

In 1970, a New York trial court in *People v. Morris* admitted results of an early breathalyzer.[36] In order to reach this result, the prosecution offered expert testimony in support of the accuracy of the device.[37] This laborious and costly trial process quickly drove a legislative response which created a regulatory process that allowed for the admission of breath testing results without the requirement of an expert witness.[38] These regulatory schemes generally consisted of requirements that the breathalyzer model was approved by a state agency, have certification of calibration, a trained operator and an adherence to proper machine maintenance and testing.[39]

As a result, portable fuel cells did not see the regulatory requirement to test for Breath

Alcohol Concentration (BrAC)[40] and the results were initially limited to preliminary testing conducted in the field by law enforcement.[41] In fact Preliminary Breath Test (PBT) results were banned from being used as evidence of BrAC in a criminal trial by statute in most states.[42]

Soberlink is a comprehensive alcohol monitoring system that combines a handheld breath alcohol instrument and a digital imager, with wireless connectivity for real-time results and reports.

For example, in 1996, the court in *Commonwealth. v. Allen*[43] stated that while results of the preliminary breath tests were admissible to show probable cause in a DWI, the device did not measure with certainty the amount of alcohol consumed. The court said the PBT would only be admissible if it was conducted by a qualified person on an approved device.[44] Many other state courts imposed a variety of restrictions on the admissibility of BrAC results based upon state legislation.[45]

With the improvements in both computer and fuel cell technology these legislative restrictions became limited to impaired driving cases. In a 1994 case, the *City of Westland v. Okopski*,[46] the court held that the results of a fuel cell PBT test were admissible for the limited purpose of impeaching defendant's testimony about alcohol use.

In *State v. Beaver*,[47] the court held that Wisconsin law did not bar admissibility of PBT results in trial for sexual assault. The court said that the statutory bar on the evidentiary use of PBT results was limited to violations of the motor vehicle code.

In 2009, the North Dakota Supreme Court in *State v. Lemley*,[48] relying on expert testimony, held that a fuel cell device (from an ankle bracelet) established that the *Daubert* standards for reliability and the results of the test were admissible in a probation violation hearing.[49] The court noted that the device did not measure the amount of alcohol consumed, only the presence of alcohol.[50]

More recently, courts have made findings that portable fuel cell technology is admissible to establish BrAC under *Daubert*. In 2011, a Federal District Court in *Fischer v. Ozaukee*[51] issued a Writ of Habeas Corpus, finding that the Wisconsin Supreme Court had erred in finding the results of PBTs inadmissible at trial.

In a 2018, another Federal District Court in *United States v McAdams*,[52] found a law enforcement officer's handheld PBT results admissible to establish the defendants BrAC in an impaired driving case in Yosemite National Park under *Daubert*.

These cases are not limited the to majority of states following the *Daubert* standard. States applying the *Frye* standard have also found handheld fuel cell devices to be admissible.

In *People v. Halsey*,[53] a case involving the unlawful consumption of alcohol by a minor, the court acknowledged that while the PBT results would be inadmissible under the Illinois Vehicle Code, the restriction only applied to offenses under that section and not other types of proceedings. The Court stated: "We hold that PBT results are admissible in evidence.... Thus, the trial court erred in suppressing evidence of defendant's PBT results. While PBT devices are less regulated than evidential devices ... no suggestion has been made that they

are inherently unreliable. Evidence that is relevant to an issue in a case should be admitted, provided a proper foundation is laid for its admission, unless its admission would contravene statutory law or some established rule of evidence."[54]

In *People v Jones*[55] a New York trial court also found that the results of a fuel cell PBT device met the *Frye* standard for admissibly as to BrAC. In reaching this decision the court expressly rejected earlier rulings that excluded BrAC evidence. The court found that once a portable breathalyzer was identified on the National Highway Traffic Safety Administration's (NHTSA) list of approved breath testing devices, it was unnecessary for the prosecution to lay a foundation to establish the device's accuracy and reliability.

Adopting the reasoning of *Jones*, the court in *People v. Hargobind*[56] held that the inclusion of a portable breath-testing device on the NHTSA approved list leaves no question as to its scientific accuracy.

The California Supreme Court in *People v. Williams*[57] allowed results of portable breath tests to establish BrAC into evidence. The court held the portable breath test was admissible as the machine was properly functioning and administered correctly by a qualified individual.

In *People v. Wilson*[58] another court, following *Williams*, held that portable breath test results were admissible if the prosecution could meet the foundational requirements. The court noted although a portable breath test may not be the equivalent of a chemical test in an impaired driving case, it could be utilized to prove a defendant's guilt.

Soberlink Device

Soberlink is a comprehensive alcohol monitoring system that combines a handheld breath alcohol instrument and a digital imager with wireless connectivity for real-time results and reports.[59] The device has innovative technology which includes facial recognition to confirm identity, along with tamper resistant sensors to ensure the integrity of the breath tests.[60]

These sensors can detect if a breath sample is consistant with human breath. Inconcistantcies are flagged for further human review to determine if tampering has occurred.[61]

The use of the Soberlink device is common in family law courts across the United States.

The facial recognition technology is used to confirm an individual's identity during each breath test.[62] If the software cannot identify the person then the image is sent to a 24/7 monitoring station for review.[63] If the identity still cannot be confirmed, then the identity is declined for that test and alerts will be sent out.[64]

The Soberlink device also has a patented retest system that allows up to seven data points to evaluate a single drinking incident.[65] In the event of a positive test, the monitored individual is prompted to retest every 15 minutes until either there is no longer a positive test or six retests have been submitted.[66] The device locks down so it cannot be used for 15 minutes after each positive test.[67] This prevents a positive test result due to incidental exposure to alcohol (i.e., mouthwash). Mouth alcohol

will dissipate during the 15-minute waiting period and prevent a report of a positive test.[68]

Test results are wirelessly transmitted in real-time to Soberlink's cloud-based web portal.[69] The web portal also can be used to create custom testing schedules, as well as providing specific testing notification and automated report settings.[70]

In 2016, the Soberlink Cellular Device was cleared by the Food and Drug Administration (FDA) as a Class 1, substantially equivalent, medical breathalyzer device.[71] In order to be cleared as a medical device it had to be manufactured under a quality assurance program, be suitable for the intended use, be adequately packaged and properly labeled, and have establishment registration and device listing forms on file with the FDA.[72]

Having met all the requirements, the Soberlink device received 510(k) premarket clearance from the FDA for medical use, quantitatively measuring alcohol in human breath.[73]

The FDA clearance itself discusses a clinical study, reported in the U.S. Library of Medicine, on the effectiveness of Soberlink devices.[74] In the clearance, the FDA compared the Soberlink device to a professional portable fuel cell breathalyzer that meets the requirements of the Department of Transportation (DOT)/NHTSA for a personal breath alcohol screening device.[75] The FDA stated the study was "to determine if intended [lay] users – untrained study participants - who had consumed alcohol could correctly use and interpret the device using only the supplied instructions. ….(P)articipants took their breath alcohol reading with the candidate device and recorded the result. Immediately afterward, the participants were administered a breath alcohol test using the…device."[76] The FDA found the Soberlink device was statistically equivalent to the professional portable fuel cell breathalyzer.[77]

The FDA then looked at DOT comparisons between another predicate[78] device and the Soberlink device. It found: "DOT Testing was conducted in accordance to the NHTSA Docket No. 2008-0030 published in 73 FR 16956. This testing included accuracy and repeatability of the Soberlink Cellular Device in comparison to the predicate device…. The Soberlink Cellular Device passed all testing stated above as shown by the acceptable results obtained."[79]

The Soberlink Device uses a professional grade fuel cell sensor made by Dart Sensors.[80] Dart Sensors is the largest original equipment manufacturer of fuel cell technology and is used widely in law enforcement testing.[81] Dart Fuel Cell sensors meet approval standards at all levels including police use and for interlocks.[82] The Dart manufactured Soberlink's fuel cell Sensor has an Accuracy Tolerance: +/- .005 and does not need to be recalibrated until 1,500 tests are submitted.[83]

The Soberlink device has been found to be more accurate than ethyl glucuronide (EtG) testing, with a higher testing compliance rate and results that are available immediately.[84] The results of testing are included in an email and/or text message which is sent to whomever the court or parties designate to receive the information.[85] The message includes the person's breath alcohol content along with date and times.[86]

Family Law Cases

The use of the Soberlink device is common in family law courts across the United States.[87] In 2018, the trial court in *Murphy v. Murphy*[88]

ordered the father to abstain from alcohol prior to visitation with the children and ordered testing using Soberlink to monitor for the presence of alcohol. The court found that it has authority to order Soberlink alcohol testing over the objections of a parent under Connecticut General Statutes §46B-56C allowing drug screening to be ordered if it is in the best interests of the children.

Soberlink is a reliable measurement instrument admissible under both Frye and Daubert standards that can accurately detect the presence of alcohol.

The trial court in *K.M.M. v. K.E.W*[89] allowed a party seeking custody to enter previous Soberlink testing results into evidence at trial to establish she was not a problem drinker.

In *Miler v. Nery,*[90] the Supreme Court of Maine upheld the trial court's order requiring the father in a contested custody case to monitor alcohol use with the Soberlink device.

Soberlink employs fuel cell technology that has been used in preliminary tests by police officers in DWI cases and can be admitted as evidence in probation violation hearings. These results can also be admitted into evidence at a hearing or trial in a family law case when a proper foundation is laid.

The beneficial use of fuel cell breathalyzers such as Soberlink in the diagnosis and treatment of alcohol use disorder (AUD) has been well documented and enthusiastically accepted in the substance use disorder treatment community.[91]

Conclusion

The technology underlying the Soberlink device has gained acceptance in the field of research on alcohol use detection. The results from its fuel cell sensor is accepted in impaired driving and juvenile dependency cases with courts ruling that it is admissible under *Frye* and *Daubert* standards. Soberlink is increasingly accepted for use in family courts in contested custody cases. The reliability of the accuracy fuel cell breathalyzer technology used by Soberlink has been established through repeated testing and publication in peer reviewed journals.[92] Reported error rates are within an acceptable+/-.005 range.[93] Published research by forensic experts supports evidentiary use of fuel cell breathalyzers.[94] Soberlink is a reliable measurement instrument admisible under both *Frye* and *Daubert* standards that can accurately detect the presence of alcohol so long as the proper foundation is established.

Endnotes

1. Soberlink Court Validation https://www.soberlink.com

2. Sorbello, Jacob, Devilly, Grant, Allen, Corey, Hughes, Lee, Brown, Kathleen, "Fuel-cell breathalyser use for field research on alcohol intoxication: an independent psychometric evaluation," US National Library of Medicine, National Institutes of Health (2018). See also, Workman, Thomas, "The Science Behind Breath Testing for Ethanol," University of Massachusetts Law Review (March 2014).

3. *Id.*

4. Grossmann, David, Hon., Portley, Maurice, Hon., "Juvenile Delinquency Guidelines: Improving Court Practice In Juvenile Delinquency Cases," National Council of Juvenile and Family Court Judges (2005). For example: *In re Haylee G.* CA2/7, B262771 (Cal. Ct. App. 2015).

5. For example, see: *State of Louisiana in the Interests of C.K*, 2016 CJ 0305, Louisiana Court of Appeals, First Circuit (2016); *Whorley v. Whorley*, 29A05-1611-DR-2637, Court of Appeals Indiana (2017); *In re: Interest of Breanna*, A-17-003 through A-17-007, Court of Appeals Nebraska (2018); *In re: Interest of S.H.* 05-17-00336-CV, Court of Appeals of Texas, Fort Worth (2017).

6. With the exception of requests for domestic violence orders of protection.

7. Based on data from the combined 2009 to 2014 National Surveys on Drug Use and Health, about 1 in 8 children (8.7 million) aged 17 or younger lived in households with at least one parent who had a past year substance use disorder (SUD). SUDs are characterized by recurrent use of alcohol or other drugs (or both) that results in significant impairment. About 1 in 10 children (7.5 million) lived in households with at least one parent who had a past year alcohol use disorder. About 1 in 35 children (2.1 million) lived in households with at least one parent who had a past year illicit drug use disorder.

8. Resource Guidelines for CA family courts - Judicial Council of California.

9. Deborah J. Chase, Pro Se Justice and Unified Family Courts, 37 FLQ 403 (2003).

10. See *Heidi S. v. David S. 1 Cal.App.5th 1150 (2016)*: "Our Supreme Court has explained that the juvenile court and the family court have different purposes and that different rules and statutes govern each court. (*In re Chantal S.*, supra, 13 Cal.4th at pp. 206, 208, 210.) *In Chantal S.*, the Supreme Court held that the juvenile court had the authority to issue an exit order indefinitely requiring the parent to participate in a counseling program even though the matter subsequently proceeded to the family court, which only had the authority to require counseling limited to one year. (*Id.* at pp.200, 208.) Relevant to this case, the Supreme Court explained, "Courts are often placed in the position of enforcing orders of other courts, even though the enforcing court could not have made the order in the first instance, or would not have present authority to issue the precise order."

11. CAL. FAM. CODE §3011: In making a determination of the best interest of the child in a proceeding described in Section 3021, the court shall, among any other factors it finds relevant, consider all of the following:

> (d) The habitual or continual illegal use of controlled substances, the habitual or continual abuse of alcohol, or the habitual or continual abuse of prescribed controlled substances by either parent. Before considering these allegations, the court may first require independent corroboration, including, but not limited to, written reports from law enforcement agencies, courts, probation departments, social welfare agencies, medical facilities, rehabilitation facilities, or other public agencies or nonprofit organizations providing drug and alcohol abuse services. As used in this subdivision, "controlled substances" has the same meaning

as defined in the California Uniform Controlled Substances Act, Division 10 (commencing with Section 11000) of the Health and Safety Code.

12. NY Family Court Act §1046 (iii): "proof that a person repeatedly misuses a drug or drugs or alcoholic beverages, to the extent that it has or would ordinarily have the effect of producing in the user thereof a substantial state of stupor, unconsciousness, intoxication, hallucination, disorientation, or incompetence, or a substantial impairment of judgment, or a substantial manifestation of irrationality, shall be prima facie evidence that a child of or who is the legal responsibility of such person is a neglected child except that such drug or alcoholic beverage misuse shall not be prima facie evidence of neglect when such person is voluntarily and regularly participating in a recognized rehabilitative program."

13. Examples are:

"Either parent may deny the other parent access to the minor child if that parent is under the influence of drugs or alcohol and constitutes a threat to the safety and well-being of the child when they arrive for visitation."

"Father must not consume alcoholic beverages, narcotics, or restricted dangerous drugs within 24 hours prior to or during periods of time with the child."

"Neither parent shall drink excessively during their custody period."

"Neither parent shall permit any third party to consume alcoholic beverages, narcotics, or restricted dangerous drugs (except by prescription) in the presence of the child."

14. For example see: Cal. Fam. Code §3041.5; see also California Administrative Office of the Courts, Center for Family, Children & the Courts, Drug and Alcohol Testing in Child Custody Cases: Implementation of Family Code Section 3041.5/Final Report To The California Legislature, (July 2007).

15. For example, see Cal. Fam. Code §3041.5 which mandates that no alcohol testing in a family court case be ordered except upon a judicial determination by a preponderance of evidence, that the parent to be tested has engaged in habitual and continued abuse of alcohol. If drug testing is ordered, it must be by the least intrusive method, and must be in conformance with the procedures and standards established by the United State Department of Health and Human Services (DHHS). These guidelines do not apply to alcohol testing. See also, *Deborah M. v. Superior Court* 128 Cal. App.4th,1181, (2005), finding that DHHS only allows for urine testing for drug use. Under FC3041.5, any alcohol testing results are strictly confidential and fines are authorized for unpermitted dissemination. Further, FC3041.5 states that "a positive test result, even if challenged and upheld, shall not, by itself, constitute grounds for an adverse custody or guardianship decision. See *Heidi S. v. David H.*, 1 Cal. App. 5th, 1150 (2016), holding that FC section 3041.5 "contains no restrictions on the court's power to alter visitation, as opposed to custody or guardianship, based on positive test result.

Complete endnotes at
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Cellular Photo Digital Breathalyzer for Monitoring Alcohol Use: A Pilot Study

Gregory E. Skipper[a] Natasha Thon[c] Robert L. DuPont[b] Michael D. Campbell[b]
Wolfgang Weinmann[d] Friedrich M. Wurst[c]

[a]Promises Treatment Centers, Los Angeles, Calif., and [b]Institute for Behavior and Health, Rockville, Md., USA; [c]Department of Psychiatry and Psychotherapy II, Christian Doppler Hospital, Paracelsus Medical University, Salzburg, Austria; [d]Institute of Forensic Medicine, University of Bern, Bern, Switzerland

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Breathalyzer · Ethyl glucuronide · Alcohol monitoring · Biomarkers · Self-reports

Abstract
Background: Monitoring alcohol use is important in numerous situations. Direct ethanol metabolites, such as ethyl glucuronide (EtG), have been shown to be useful tools in detecting alcohol use and documenting abstinence. For very frequent or continuous control of abstinence, they lack practicability. Therefore, devices measuring ethanol itself might be of interest. This pilot study aims at elucidating the usability and accuracy of the cellular photo digital breathalyzer (CPDB) compared to self-reports in a naturalistic setting. ***Method:*** 12 social drinkers were included. Subjects used a CPDB 4 times daily, kept diaries of alcohol use and submitted urine for EtG testing over a period of 5 weeks. ***Results:*** In total, the 12 subjects reported 84 drinking episodes. 1,609 breath tests were performed and 55 urine EtG tests were collected. Of 84 drinking episodes, CPDB detected 98.8%. The compliance rate for breath testing was 96%. Of the 55 EtG tests submitted, 1 (1.8%) was positive. ***Conclusions:*** The data suggest that the CPDB device holds promise in detecting high, moderate, and low alcohol intake. It seems to have advantages compared to biomarkers and other monitoring devices. The preference for CPDB by the participants might explain the high compliance. Further studies including comparison with biomarkers and transdermal devices are needed.

Introduction

Alcohol monitoring to document abstinence is conducted in numerous settings including treatment and recovery from alcohol or other substance addiction, court-ordered abstinence, custody cases in which child visitation is contingent upon parental abstinence, regulatory board or professional monitoring programs mandating abstinence as a condition of licensure or return to work, family or school monitoring of alcohol consumption in children, and in medical clinics when alcohol use may cause exacerbation of underlying medical problems (e.g. diabetes, esophagitis, or liver transplantation). Alcohol monitoring in these settings is useful for advocacy, deterrence, and early detection of relapse [1].

The value of monitoring alcohol use by measuring its presence in blood, breath, or urine is limited since alcohol itself remains detectable in the body for a period of hours only. Residual biomarkers can, however, provide impor-

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E-Mail karger@karger.com
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Prof. Dr. Friedrich Martin Wurst
Department of Psychiatry and Psychotherapy II
Christian Doppler Hospital, Paracelsus Medical University
Ignaz-Harrer-Strasse 79, AT–5020 Salzburg (Austria)
E-Mail f.wurst@salk.at

tant objective information on more distant drinking status that may not be accurately obtained from the patient's verbal report or clinical examination. They are advantageous as compared to traditional biological state markers, such as liver enzymes or mean corpuscular volume, since those are indirect measures of ethanol intake. Therefore, they are limited with regard to the time period for previous drinking and/or are confounded due to age, gender, other ingested substance intake and non-alcohol-associated diseases [2–5]. On this background, direct ethanol metabolites have gained interest during the last two decades.

Ethyl glucuronide (EtG), a promising marker of alcohol intake, is a direct metabolite of alcohol formed as a conjugate of alcohol with glucuronic acid in the liver, catalyzed by the enzyme uridine diphosphate glucuronyltransferase [3, 5–7]. EtG is measureable in tissue, blood, hair, and, most commonly, in urine [6]. With an estimated 5 million or more tests conducted annually in the USA [D. Lewis, CEO, US Drug Test Lab, Chicago, 5/2/12, pers. commun.] it is the most widely used direct ethanol metabolite. EtG testing has gained widespread use because EtG: (1) is detectable in urine (still the most common matrix for testing); (2) can be detected in urine for up to 7 days; (3) testing is relatively inexpensive, and (4) it is now widely available through most reference laboratories.

Despite its growing popularity, urine EtG (UEtG) testing faces certain limitations. A positive test result can be misleading because it can be positive from extraneous exposure to alcohol from any of a myriad of products such as food [8], mouthwash [9], hand-sanitizing gels [10], or over-the-counter medications. Also, in vitro formation of EtG from bacterial action in urine in some settings [11, 12] or from consuming sugar and yeast [13] has been reported.

There is no universally agreed upon cutoff that accurately distinguishes between drinking and extraneous exposure. However, based on the fact that exposure studies never yielded results >1,000 ng/ml, a differential cutoff has been suggested of 1,000 ng/ml or more for EtG to confirm drinking [14]. In addition, a recent revision of the SAMHSA advisory suggests that values of between 500 and 1,000 ng/ml could be from previous drinking as well as from recent intense extraneous exposure within 24 h or less [15].

Given these limitations, an additional, accurate, convenient, and affordable method for monitoring alcohol use might be desirable. New devices that appear to hold promise have emerged for monitoring alcohol abstinence, including transcutaneous alcohol-monitoring devices [16–18] and, more recently, cellular photo digital breathalyzers (CPDB).

Transcutaneous alcohol-monitoring devices use fuel cells to periodically measure alcohol exuded through the skin. The results are forwarded daily to a central computer via modem where the readings are analyzed and reports are generated. Measurement of alcohol levels in this manner have been shown to accurately correlate with blood alcohol [19]. The transcutaneous devices, however, also have significant operational drawbacks because they must be securely attached to an extremity and must be worn continuously. They are therefore cumbersome, intrusive, can cause discomfort and may be stigmatizing.

A new CPDB device that is portable similar to a breathalyzer has been introduced. Results are transmitted over the cellular network along with a photo. The photo is taken of the user's face mid-exhalation when the breath alcohol is sampled. The facial image is available for visual examination to identify the donor along with the breath alcohol result immediately on a monitoring website. This new device is small and can be carried in a purse or pocket and works in conjunction with a smartphone that can be programmed to beep when a test is required. The software can be set to send an e-mail or text message to the monitor to report a positive test or if a test is missed. Additionally, if alcohol is detected, a repeat test is automatically requested 15 min later. This is important to eliminate extraneous exposure to alcohol vapor in the atmosphere as a cause for a positive test. Extraneous alcohol vapor, which could occur from alcohol hand sanitizer, mouthwash, etc., dissipates within a few minutes. These devices appear to be simple, affordable, accurate, and reflect real-time readings of breath alcohol, as they report immediately, and thus may be more sensitive and specific for alcohol use than other methods.

This study aims at elucidating the usability and accuracy of the CPDB as compared to self-reports in a naturalistic setting. In addition, the results were compared to random UEtG testing. The frequencies of use, 4 times daily for CPDB and weekly testing with EtG, are compared because they are practical levels of use in the field for the two methods of testing.

Methods

Design

This prospective pilot study aims at comparing CPDB, self-reports and UEtG testing for monitoring alcohol use in the same subjects over a 5-week period. Subjects were contacted daily by phone to encourage compliance, answer questions and to notify them when to submit the urine sample. All urine specimens were collected between 9 a.m. to 1 p.m. at a designated collection site.

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Table 1. Descriptive data of the subjects

Subject	Drinking episodes	Maximum number of standard drinks on one occasion	Number of UEtG tests/number of positive UEtG tests	Number of breath tests/number of positive breath tests	Alcohol levels for positive breath tests, g/dl		Minutes from drink to breath test	
					lowest	highest	min.	max.
1	7	3	5/0	140/7	0.007	0.064	59	205
2	2	6	5/0	134/2	0.029	0.105	271	330
3	10	3	5/0	140/10	0.010	0.320	42	255
4	6	5	5/0	140/5	0.006	0.095	47	252
5	4	3	4/0	140/4	0.007	0.088	110	182
6	5	6	5/0	140/5	0.012	0.170	38	66
7	7	4	4/0	122/7	0.015	0.147	15	122
8	22	10	5/1	127/22	0.006	0.257	11	216
9	5	4	5/0	140/5	0.010	0.104	62	139
10	6	3	5/0	120/6	0.014	0.081	24	221
11	2	2	3/0	128/2	0.011	0.013	141	230
12	8	2	4/0	138/8	0.008	0.358	8	308

Simultaneously, over the same period the subjects were reminded to submit CPDB readings 4 times daily: upon arising, after lunch, after dinner, and before bedtime. Subjects were asked to keep a detailed log of their alcohol use (day, time, type of alcohol, and amount) as well as a record of all food, drink, and/or products in the environment that might contain alcohol. At the end of the study, subjects completed a questionnaire regarding acceptability and ease of providing urine and breath samples.

Subjects

Twelve subjects were recruited via a posting on Craig's List. The ad stated, 'Social drinkers sought to participate in a 5-week alcohol-monitoring study. Must be between 21 and 60 with no history of alcoholism, addictions, or current pregnancy. Upon completion subjects may keep their breathalyzer device, value $650. To participate call <phone number>.' Social drinkers were defined as drinking less than 3 times per week. Subjects were screened via telephone. Of the first 15 who called, 3 individuals were eliminated because they consumed alcohol more than 3 times per week. Of the 12 selected subjects, 8 were men and 4 women, between 24 and 52 years of age. All subjects signed informed consent to participate and were anonymized. Subjects were allowed to suspend testing for 3–8 days because of holidays and vacations and these days were added to the end so that all subjects participated in monitoring for a total of 35 days.

Laboratory and CPDB Testing

MedTox Diagnostics, Inc., Burlington, N.C., USA, provided UEtG testing utilizing the Microgenics immunoassay with reflex LC/MS/MS confirmation. The cutoff for the EtG immunoassay was 500 ng/ml, and is the most commonly used cutoff. The CPDB devices were provided by Soberlink, Inc., Costa Mesa, Calif., USA.

Monitoring Preference

Subjects were asked the following questions at the end of the study: (1) If you had to choose one method of monitoring over the other, would you choose random urine drug testing weekly or 4 times daily blowing in the Soberlink CPDB device? (2) Please describe the difference between both methods of monitoring.

IRB Approval

The design of this study as well as all data collection and patient protection procedures were reviewed and approved by the full membership of a duly constituted Independent Review Board, RCRC, Austin, Tex., USA.

Results

The 12 subjects reported 2–22 drinking episodes each resulting in a total of 84 drinking episodes. The maximum number of drinks per occasion ranged between 2 and 10 where 1 standard drink was defined as 14 g ethanol according to the NIAAA definition [20]. A total of 1,609 breath tests were performed and 55 UEtG tests were collected.

Of the breath tests, 71 were not collected by 6 subjects for various reasons, including 'forgot to test' and 'battery was dead'. The compliance rate for successful breath testing was thus 96%. Of the total breath tests, 1,525 (94.8%) were negative and 84 (5.2%) were positive. On average, positive breath tests were taken approximately 2 h after reported drinking episodes (range 8–330 min). Of a total of 84 reported drinking episodes, 83 were followed by a positive breath test resulting in a sensitivity of 98.8%. In 1 case, the breath test at 9 p.m. was negative following a reported consumption of 3 beers at 6 p.m. There was 1 false-positive breath test (result 0.007 g/dl) that was un-

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explained. The individual number of breath tests ranged from 120 to 140 with positive test levels of between 0.006 and 0.358 g/dl.

Of 60 possible UEtG tests, 55 were obtained. Five tests were missed by 4 subjects who failed to test for various reasons, including 'forgot to go' and 'collection site closed'. The compliance rate for successful UEtG testing was thus 92%. Of the 55 UEtG tests submitted, 1 (1.8%) was positive and 98.2% were negative. The positive test was obtained the morning after the subject reported having 5 drinks. There were no false-positive UEtG tests (for further details, see table 1).

Regarding the monitoring preference questions, all participants preferred the CPDB device. Differences mentioned between the two methods of monitoring were the following: 'It's much easier to take 30 s 4 times per day than to drive to a collection site and wait sometimes ½ hour to submit a urine sample.' 'Much more convenient to blow in the Soberlink from home than to go to a collection site.' 'Embarrassing to submit a urine. Easy to blow in Soberlink device.' 'Much prefer blowing in Soberlink device.' 'No comparison. Prefer blowing.' 'Just easier.' 'More trouble to drive somewhere and wait to give urine sample.' '1 min per breath test, 30–45 min per urine.' 'No comparison.'

Discussion

The major findings of this pilot study employing the portable CPDB using data transmission over a cellular network along with a photo are: (1) of all reported drinking episodes, 98.8% were detected by the CPDB. (2) The compliance rate for successful breath testing was with 96% extraordinarily high. (3) All participants preferred the CPDB over the EtG testing. These findings are of importance since alcohol is one of the most common substances of abuse.

UEtG testing has emerged over the past decade and has gained widespread use in monitoring; however, it also faces certain limitations. These include the fact that only a higher dose of ethanol results in detectable UEtG values for longer than 24 h: Wojcik and Hawthorne [21] found UEtG to be positive at 24 h in 5 out of 6 cases with doses of 0.39–0.85 g ethanol/kg body weight and 0 of 2 with doses of 0.19–0.28 g ethanol/kg body weight at a cutoff of 100 ng/ml. Halter et al. [11] found 4 out of 13 subjects to be UEtG-positive for more than 44 h after an ethanol intake of 0.5–0.8 g ethanol/kg body weight. Also in this study a low cutoff was chosen with a limit of quantitation of 0.45 μmol/l. Since in our study the commonly used cutoff of 500 ng/ml was used, it cannot be excluded that some positives in the range of 100–500 ng/ml were missed. The SAMHSA advisory of 2012 on 'The Role of Biomarkers in the Treatment of Alcohol Use Disorders' [15] states: A 'very low' positive (100–500 ng/ml) may indicate: previous heavy drinking (1–3 days), previous light drinking (12–36 h) or recent 'extraneous' exposure. Therefore, to monitor for total abstinence, the cutoff of 100 ng/ml has been suggested [14, 15].

If some drinking is not detected using the common UEtG cutoff, it can encourage subjects to continue to drink and presents problems for agencies that rely on the tests for detection of drinking and assurance of abstinence. Furthermore, if tests are falsely positive, it causes false accusations and can lead to unjustified sanctions, such as loss of visitation or loss of medical license. Therefore, a complementary and/or additional accurate and reliable method of monitoring alcohol is desirable.

Our data suggest that the real-time use of a breathalyzer such as a CPDB device could be such a solution. The finding that EtG in urine is detectable in social drinkers with single drinking episodes only in few cases for more than 24 h after doses of 0.5–0.8 g ethanol/kg body weight are in line with previous studies [11, 21].

Transdermal alcohol sensors are another method established, studied, and validated in the last years as an effective and feasible method for measuring the transdermal alcohol concentration [16]. One device, the Secure Continuous Remote Alcohol Monitoring (SCRAM) bracelet, has been evaluated in controlled laboratory environments and field studies [18] and furthermore has been found to be effective for the reduction of alcohol intake in the context of contingency management [17]. However, embarrassment, experiencing negative attention, marks on skin, interference with physical activity, discomfort [17] about the bracelet and water accumulation over time [22] had been reported. Those may limit the utility of transdermal devices.

The CPDB is an unobtrusive, easy-to-use device. As the data are transmitted via the cellular network, the participants do not have to go to site for a breath test. Therefore, it is not time-consuming, no staff is directly involved and an immediate feedback can be given. Also, participants may have the opportunity to gain new levels of insight regarding their alcohol consumption. Therefore, CPDB cannot only be used as a monitoring instrument but also as a therapeutic method, alone or in the context of already existing therapeutic approaches such as contingency management.

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The retail price of the Soberlink device is USD 650 plus USD 150 per month for monitoring. The annualized cost of monitoring using the CPDB would therefore be USD 2,450 per person. However, the price remains the same no matter how many times the device is used. On the background of the recent price reduction the annual costs would be now USD 2,020. In comparison, usual costs for UEtG testing in the USA range between 15 and 30 USD. Aiming at a good balance between practicability, reliability and security, random UEtG testing on average every 3 days would result in annual costs of between USD 1,500 and 3,000. If constant monitoring employing UEtG is desirable, daily testing would be required and result in annual costs of approximately USD 4,500–9,000. However, in the case of daily urine testing, practicability is questioned.

Limitations

The study design aimed at elucidating the usability of CPDB. Therefore, the time points for breath tests were given and known by the participants. This would in the context of monitoring be a severe limitation since subjects can attempt to avoid detection of drinking episodes by timing their drinking. To overcome this, random testing is required. It is quite likely that the very good compliance is at least in part due to the daily telephone calls. Contacting subjects daily by phone might even be feasible in routine settings or also could be done by automated text messages. Finally, the fact that participants could keep their breathalyzer device at the end of the study might have impacted the acceptability outcome.

Conclusion

The data suggest that the CPDB device holds promise in detecting not only high but also moderate and low alcohol intake. Furthermore, it seems to have advantages as compared to biomarker tests and other monitoring devices. The preference for CPDB by the participants might explain the high compliance. Further research involving a larger number of subjects, longer test periods, different subject populations (e.g. individuals in recovery or in court-ordered monitoring programs), and comparison with biomarkers and transdermal devices are needed.

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Disclosure Statement

The authors have no conflicts of interest to disclose.

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Frequently Asked Questions

How do I choose the right program?
The most successful participants choose the program level that matches the seriousness and risk associated with past alcohol abuse.

- **The Level 1 - Parenting Time Only Program** is for the client who only needs monitoring during parenting time. This program requires good communication between the two parties.
- **The Level 2 - Daily Testing Program** is for the clients who are at high risk for alcohol abuse. The Soberlink system manages the testing, which is seven days a week. With this level, the system sends test reminders to the Monitored Client and Missed Test notifications to the Concerned Party and Contacts.

What is the difference between the Basic, Plus, and Premium Plans?
Once you decide between Level 1 and Level 2 monitoring, you must choose which plan is going to serve your alcohol monitoring needs best. The difference between the plans is how the Concerned Party receives the testing results. All plans include Daily, Weekly, and Monthly Reports.

- **Basic Plan:** Next day email Reports
- **Plus Plan:** Real-time email Alerts
- **Premium Plan:** Real-time email and text Alerts

Why Soberlink for Family Law?
Soberlink allows parents to be more active and in control of custody arrangements. Our system is the most intuitive and robust available in child custody management. Monitored Clients can submit BAC tests from anywhere at anytime. The Plus and Premium Plans' real-time results and the detailed Reports set a new standard for alcohol monitoring in custody arrangements.

How accurate is Soberlink?
Each Soberlink Device is equipped with the highest quality fuel cell sensor available. This professional grade sensor has an accuracy level of +/- 0.005 BAC. The fuel cells in Soberlink Devices are globally trusted and used in other high-end, professional grade breath alcohol instruments.

Can we trust the results of Soberlink?
On July 14th, 2016, Soberlink was cleared by the FDA for medical use by healthcare providers to remotely measure alcohol in human breath, to aid in the detection and monitoring of alcohol consumption in those who suffer from alcohol use disorders.

During the clearance process, Soberlink conducted an Institutional Review Board (IRB)-approved clinical study to prove the accuracy and usability of the Soberlink Device. A summary of how the testing was conducted can be found in the Usability Protocol, approved by IntegReview IRB. The conclusion found the Soberlink Device to be adequately safe and effective for the intended users, its intended uses, and use environment.

Soberlink Reviews

My local county court system has adopted Soberlink as the gold standard for monitoring sobriety. I believe that the reliability of Soberlink will likely prevent another falsely accused parent from having their children taken away.

— Soberlink Client

I can honestly say that I would not be sober, surrounded by my beautiful kids, living an incredible life if it weren't for [Soberlink].

— Soberlink Client

The cases in which the court does not require such a choice will often lead to endless litigation. How much simpler would it be if family courts uniformly implemented [Soberlink].

— Gregory Fomran, Family Law Attorney

I think it helps the clients. It helps the courts and it also holds people accountable.

— Rebecca Armstrong, Family Law Attorney

[Soberlink] solves problems in traditional urine testing... you know within minutes of the test, and it has fail-safes for substantial reliability.

— Jared Sandler, Family Law Attorney

Contact Us

Customer Service

Call or email us with your inquiry: **714.975.7200** or info@soberlink.com

Changes to an existing agreement or requests for Client Records: support@soberlink.com

Questions about positive BAC events must be emailed to: compliance@soberlink.com

Resource Page

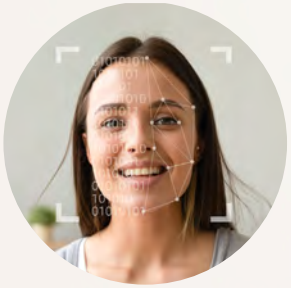
Visit the Family Law Professionals section at soberlink.com/professionals-family-law

Notes

What Soberlink Customers Say

"The Soberlink Device reminds me of a phone or pager. It's discreet, super easy to use, and makes me responsible."

– Soberlink Monitored Client



"The facial recognition and other technical aspects that are constantly being developed make Soberlink different from other alcohol monitoring solutions."

– Judge

"The immediate notifications that Soberlink provides gives me reassurance that my child is safe."

– Soberlink Concerned Party

Soberlink Healthcare
16787 Beach Blvd #211, Huntington Beach, CA 92647
info@soberlink.com | 714.975.7200 | www.soberlink.com

Soberlink Best Practices:
Based on an Expert Panel

When formulating a parenting agreement, courts follow the general principle that the best interests of the child should govern custody and parenting time. While the needs of the parents are also important, Family Law courts place a greater priority on the child's development and adjustment.

Many times, in Family Law cases, alcohol monitoring is ordered. In the past, random Urine Ethyl Glucuronide (EtG) testing was the only way courts could test an individual's sobriety. However, random EtG tests can only be ordered a few times a month, causing many drinking events to go undetected. Furthermore, EtG test results are not in real-time, which means no immediate action can be taken if alcohol use occurs during parenting time. Fortunately, in 2011, Soberlink developed an innovative alcohol monitoring system that allows for real- time testing multiple times a day, either seven days a week or only during parenting time.

The new alcohol monitoring technology proved to be extremely advantageous for Family Law, where reliability and real-time results are key for child safety. However, as with any new technology, some confusion may occur during implementation. Many times, court orders for Soberlink monitoring are written with the same language as the older method of random EtG tests, which would not be successful with the Soberlink system.

Understanding that guidance was needed, Soberlink brought together a group of Addiction Treatment experts who formed a panel to determine the most effective way to use Soberlink. The panel's results were published in the Mar/Apr 2017 issue of the Journal of Addiction Medicine.

The purpose of this document is to provide Soberlink alcohol monitoring guidelines for Family Law, using the panel's expert insight on the following topics:

- Test Frequency and Program Duration
- Random vs. Scheduled Testing
- Responding to a Missed Test
- Responding to a Positive Test

Test Frequency and Program Duration

The Myth

"The parent should be set up with as many tests per day as possible to ensure sobriety."

This is actually the most detrimental and common mistake professionals make when setting up testing schedules. While it seems like an individual should test as many times as possible, a schedule that

includes more than four tests per day can become a source of anxiety that negatively influences parenting time.

Soberlink's technology will help parents form healthy habits. Setting up a testing schedule is a good way to establish an accountability structure that will keep the parent on track. However, if a parent is overwhelmed with required tests, this accountability structure can start to feel more penalizing than helpful, which can be detrimental to the program.

Furthermore, because alcohol use disorder is most effectively treated with ongoing monitoring, the testing schedule needs to be sustainable over a long period of time. In fact, the consensus from the expert panel suggested that people should use Soberlink for a minimum of one-year when beginning recovery. The one-year baseline also applies to Family Law in that, typically, the person being mandated to use Soberlink is trying to manage or stop their drinking for the first time. Because this will be an ongoing process, requiring the parent to take an excessive number of tests is counterproductive and will be intrusive to their time with the child.

The Expert Panel's Recommendation

The panel came to unanimous consensus, recommending three tests per day at the start of a Soberlink program. Furthermore, to promote progress and growth, the panel agreed that the number of daily tests could be reduced to two tests after a period of favorable results. The panel also noted that if a person's circumstances were more challenging, such as an increased exposure to environmental triggers, a maximum of four tests per day would be acceptable. However, this should also be reduced over time as attitudes and habits improve.

Random vs. Scheduled Testing

The Myth

"It is better to require random tests and surprise the parent instead of setting up a test schedule."

It is accepted that EtG tests should be administered randomly and periodically. However, Soberlink testing should be viewed from a different perspective. EtG tests are random because there are only two to three tests required per month. Soberlink, which facilitates up to 120 tests per month, simply will not work if set up with random testing. Random tests that happen multiple times a day are overwhelming and will likely result in excessive missed tests and more anxiety for the parents.

The stress of random testing multiple times a day is dramatically more overwhelming than the stress of two or three random EtG tests a month. While it might seem like a good strategy to attempt to catch the parent "off guard" with random tests, this type of scheduling will add more strain to the relationship between parents, which is not beneficial for the child.

The Expert Panel's Recommendation

With regard to scheduling, the expert panel came to a unanimous consensus that scheduled testing at agreed upon times is the best method for alcohol monitoring. The panel agreed to a test schedule of two to three tests per day with a 2-hour and 15-minute test window. The panel

determined this type of scheduling to be the most convenient option for a parent who will be monitored during the recommended 12 months of use.

Responding to a Missed Test

The Myth

"Any instance of missing a test should be treated as a drinking event."

A missed test is a scheduled test that is not submitted within the agreed upon timeframe. It is important to note that missed tests happen quite often and there can be a number of reasons to excuse a missed test. For example, a person may have simply forgotten their device at home or were unable to break away from their daily routine to submit a test.

The panel concluded that it may be more valuable to think of instances of missed tests as opportunities to reevaluate the schedule and program needs, request additional testing, or intervene before a full-blown relapse occurs. While a missed test event should be treated with concern, the approach for dealing with it should include some type of communication between the two parties instead of jumping to a hasty conclusion or consequence. The communication and decision on how to handle the missed test should always be in the best interest of the child.

However, if missing tests becomes a regular occurrence, this habit should not be ignored because it can be a serious challenge to any type of monitoring program. Holding someone accountable with agreed-upon consequences is the best way to manage missed tests. Consequences for missed tests may be harsher if there is an excessive number of missed tests in a given month, if the missed tests are back-to-back, or if there is a full day of missed tests without a legitimate excuse.

The Expert Panel's Recommendation

The panel came to a unanimous consensus that missed test events should be dealt with using a rational discussion rather than immediate consequences. The panel further recognized that, though these instances are serious and should be dealt with swiftly and thoroughly, they are not grounds for an immediate change to the parenting plan.

Responding to Positive Tests

The Myth

"Positive tests should result in immediate and harsh consequences."

As serious as a positive test result may be, leading with punishment is not always the best path. In fact, the most beneficial response for the child may be an adjustment to the parenting plan that is appropriate for the situation. Just like with missed tests, using a system of punishment, rather than one of evaluation, will create the hostile environment that is toxic to a parenting plan. A positive test can be seen as an

opportunity to reevaluate parenting for that day, request additional testing, or reduce or eliminate parenting time in the worst-case scenario.

The Expert Panel's Recommendation

The panel unanimously decided that positive test results should be followed by immediate action. In Family Law, it is important that the consequences are in the best interest of the child and decided upon before testing begins. Another factor to consider when establishing the consequences is the BAC levels of the positive events. For example, a .009 BAC is an extremely low threshold for alcohol consumption while a .09 BAC is considered a level in which behavior and judgment are affected.

Each instance of a positive test result varies from person to person and, for this reason the panel stressed the importance of considering the prior history of the person, the point during monitoring when the positive tests occurred (early in the program or after a significant period of sustained sobriety), and whether the parent self-disclosed the drinking episode.

The first instance of a positive test is an opportunity to address the parenting plan and monitoring guidelines to ensure they are effectively meeting the parents' and, more importantly, the child's needs. If more than one positive test occurs, the situation may require more comprehensive intervention.

> *Note: In cases where missed or positive tests result in the immediate removal of custody, Soberlink recommends additional resources to compliment the monitoring program such as an Addiction Professional and the inclusion of a PEth Blood Alcohol test once or twice a month.*

About the Expert Panel & Consensus Paper

The panel was comprised of physicians and experts with extensive experience and knowledge of alcohol use disorders and the addiction treatment industry. They assembled for a full day of collaborative meetings to reach a consensus on the best use of remote alcohol monitoring. A paper of their findings was written and published in the Journal of Addiction Medicine.

All decisions made by the expert panel were reached by organic consensus and have been determined to be the absolute best practices when using Soberlink.

About Soberlink

Soberlink supports accountability for sobriety through a comprehensive alcohol monitoring system. Combining a professional-grade breathalyzer with wireless connectivity, the portable design and state-of-the-art technology includes facial recognition, tamper detection and real-time reporting to designated monitoring parties. With FDA 510(k) medical clearance, Soberlink is the trusted toolin family law, addiction recovery and workplace compliance. Soberlink proves sobriety with the highest level of reliability and accuracy to foster trust and peace of mind.

To learn more about Soberlink, visit www.soberlink.com or call **714.975.7200**.

SOBERLINK

Soberlink Family Law Order Form

Doc Code: _____

Official Document Stamp

IN AND FOR COUNTY OF _____

CASE NO. _____

It is ordered that_____[Monitored Client] will participate in Soberlink Monitoring under the following conditions.

FAMILY LAW MONITORING PROGRAM (Choose One)

☐ **LEVEL 1 – Parenting Time Only:** Test times should be included in the parenting plan and are managed by the Monitored Client and Concerned Party

☐ **LEVEL 2 – Daily Testing:** 7 days a week, 365 days a year at agreed upon times, managed by the Soberlink System

IF **LEVEL 2** IS CHOSEN, FILL IN TESTING TIMES BELOW (Fill Test Times)

- The First Test of the Day is ☐ : 00 AM, and the Last Test of the Day is ☐ : 00 PM
- Select the total number of scheduled tests per day (Choose One)

☐ 2 Tests ☐ 3 Tests ☐ 4 Tests

Note: Best practice suggests the first test of the day to occur shortly after waking and the last test of the day to occur just before bedtime. If more than 2 tests per day are required, the additional test times will be scheduled by Soberlink in between the first and last tests.

HOW TESTING ACTIVITY IS REPORTED TO CONTACTS (Choose One)

☐ **Basic Plan:** Emailed daily reports of the previous day's testing (No Real-Time Alerts)

☐ **Plus Plan:** Emailed test results in real-time to unlimited contacts

☐ **Premium Plan:** Text and Emailed Test results in real-time to unlimited contacts

Note: Pricing varies by level and plan. Details can be found at www.soberlink.com.

SOBERLINK

WHO IS RESPONSIBLE FOR THE MONTHLY MONITORING FEES?

☐ Monitored Client ☐ Concerned Party

CONTACT INFORMATION

Monitored Client (The person who is required to submit tests using the Soberlink Device.)

Name: _____ Email: _____ Phone #: _____

Concerned Party (The person who receives test results and has the best interests of the child(ren) in mind.)

Name:_____Email:_____Phone #: _____

The Monitored Client, Concerned Party and additional Contacts will be set up with default Alerts and Reports based on the chosen plan. Parties can change their personal alerts or reports after setup by emailing support@soberlink.com.

Additional Contacts to receive alerts or reports (Only Plus and Premium Plans)

Name:_____ Email:_____Phone #: _____

Name:_____ Email:_____Phone #: _____

Name:_____ Email:_____Phone #: _____

Name:_____ Email:_____Phone #: _____

Before monitoring can begin, the Monitored Client and Concerned Party will be required to electronically sign a Soberlink Monitoring Program Agreement ("Agreement"). Soberlink will use this order form to fill out the details of the Agreement. The information provided in this document will supersede any other agreements between the Parties and Soberlink. The purpose of this document is to ensure that monitoring is set up correctly. The Monitored Client and Concerned Party may agree to make changes after setup.

The above conditions are ordered by:

(Document not valid without signature)

_____

Judge Name

_____ _____

Judge Signature Date

Send to support@soberlink.com or fax to 310.388.5605

SOBERLINK

Soberlink Implementation Outline for Law Professionals

Introduction

Family Law Professionals have been using Soberlink alcohol monitoring since 2011. However, as with any new technology, some confusion may occur during implementation. This outline is meant to guide law professionals through the various steps needed to implement the Soberlink system correctly.

NOTE: This document and any order created from it **are not considered final documents** and will not be accepted by Soberlink to begin testing set up.

Definition of Terms

These terms have been defined for the purposes of this document.

- **Monitored Client**: The parent required to submit tests using the Soberlink Device
- **Concerned Party**: The person who will receive Soberlink test results and has the best interests of the child(ren) in mind
- **Order**: The court order, parenting agreement or any other document created by the attorney, mediator, judge, etc. that includes details on how the Soberlink Agreement should be filled out
- **Soberlink Agreement**: The contract that will be requested at www.soberlink.com, completed and electronically signed by the Monitored Client and Concerned Party. This document dictates how Soberlink monitoring will be set up, and must be completed before Soberlink monitoring can begin
- **Alerts/Reports**: Text and/or email notifications regarding tests/test results
- **Soberlink Best Practices: Based on an Expert Panel Document**: Many times, orders for Soberlink monitoring are incorrectly written with the same language as older methods such as lab testing. Understanding that guidance was needed, Soberlink brought together a group of Addiction Treatment experts who formed a panel to determine the most effective way to use Soberlink. The panel's results were published in the Mar/Apr 2017 issue of the **Journal of Addiction Medicine** (www.soberlink.com/alcohol-addiction-treatment/#jam). Based on their findings, Soberlink created a paper called **Soberlink Best Practices: Based on an Expert Panel** (www.soberlink.com/family-law/#guide). **It is recommended that this paper be read before completing this outline.**

Contents

Important Reminders

- This document and any order created from it **are not considered final documents** and will not be accepted by Soberlink to begin testing set up. A Soberlink Agreement must be requested at www.soberlink.com, completed and electronically signed by the Monitored Client and Concerned party before monitoring can begin.

- Soberlink set up will be based on the details of the Soberlink Agreement, and not the order. If an order's details do not align with the Soberlink Agreement, the Soberlink Agreement will still dictate testing set up.

- If testing is mandated by a judge, a **Family Law Order Form** (www.soberlink.com/support/helpful-documents/) should be filled out and submitted to Soberlink. Soberlink will use this document to prefill the Soberlink Agreement before it is sent to the Monitored Client and Concerned Party for electronic signature.

Soberlink Implementation Steps

1. Law Professional completes Order Language Outline (See page 3)

2. Law Professional creates the order

3. Either the Monitored Client or Concerned Party Requests the Soberlink Agreement (Agreement Request can be found at: www.soberlink.com/support/start-family-law-agreement)

4. Monitored Client or Concerned Party Fills out Soberlink Agreement in Accordance with Order

5. Monitored Client and Concerned Party electronically sign Soberlink Agreement

Order Language Outline

Questions to be Answered and Written into Court Order

How often will monitoring occur? (Which Soberlink Program will be used?)

- ○ Only During Parenting Time (Level 1 – Parenting Time Only)
- ○ 7 Days a Week (Level 2 – Daily Testing)

How will testing be reported (Which Soberlink Plan will be used?)

- ○ **Basic Plan** – No real-time Alerts. Daily email Reports of previous day's testing. Limited to 2 Report recipients. (Monitored Client and Concerned party)
- ○ **Plus Plan** – Real-time email Alerts. Daily, Weekly and Monthly email Reports. Unlimited Report recipients.
- ○ **Premium Plan** – Real-time email and text Alerts. Daily, Weekly, and Monthly email Reports. Unlimited Report recipients.

Who will pay for the Device and monitoring fees?

- ○ Monitored Client
- ○ Concerned Party

Monitored Client (The parent who is required to submit tests using the Soberlink Device)

Name: _____ Email: _____ Phone #: _____

Concerned Party (The person who receives test results and has the best interests of the child(ren) in mind)

Name: _____ Email: _____ Phone #: _____

Note: The Monitored Client, Concerned Party and additional Contacts will be set up with Default Alerts and Reports. Parties can change their personal Alerts or Reports after setup by emailing support@soberlink.com.

Additional Contact to Receive Alerts or Reports:

Name: _____ Email: _____ Phone #: _____

Name: _____ Email: _____ Phone #: _____

How many tests per day are required during a full day of testing?

**Note: Soberlink Best Practices states to start with 3 tests/day and reducing to 2 tests/day with consistent compliant behavior. Guidance is provided in Soberlink Best Practices: Based on an Expert Panel.*

- ○ 2 Tests/day (When waking up and before bed)
- ○ 3 Tests/day (When waking up, mid-day, and before bed)
- ○ 4 Tests/day (When waking up, early mid-day, late mid-day, and before bed)

What are the consequences of a positive test?

**Note: Guidance is provided in Soberlink Best Practices: Based on an Expert Panel.*

What are the consequences of a missed test?

**Note: Guidance is provided in Soberlink Best Practices: Based on an Expert Panel.*

Soberlink Required Language for All Orders

- Alcohol monitoring will be obtained from Soberlink. A Device shall be purchased at www.soberlink.com
- A Soberlink Monitoring Agreement shall be requested at www.soberlink.com and electronically signed by the Monitored Client and Concerned Party before monitoring can begin.
- The party that requests the agreement at www.soberlink.com will fill out the agreement details.
- Upon activation, Monitored Client will opt in to Soberlink text messages
- Soberlink records will be admissible in court

Suggested Order Language for Testing Instructions

Level 1 – Parenting Time Only

- A test shall be sent 1 hour prior to Parenting Time and immediately following the conclusion of Parenting Time.
- During Parenting Time, the Monitored Client shall submit a test upon waking up, in the middle of the day, and before bed.
- A test will be considered "Missed" if it is not performed within 2 hours and 15 minutes of the agreed test time.

Level 2 – Daily Testing

- Testing is required 7 days a week
- No alcohol is allowed to be consumed at any time
- 3 Tests will be scheduled per day
- Test windows will be set at 2 hours and 15 minutes
- Tests will be scheduled upon waking up and before bed. The first test of the day shall be scheduled at the Monitored Client's typical waking hour. The last test of the day will be scheduled at the Monitored Client's typical bed time hour. The third test will be scheduled by Soberlink based on Soberlink Best Practices.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Soberlink in Family Law
www.soberlink.com

1


SOBERLINK
Improving Lives
Table of Contents
• Soberlink Technology
• Soberlink Family Law Monitoring Programs
• Soberlink Reporting
• Best Practices by Addiction Experts
• Getting Started
• Soberlink Support
www.soberlink.com
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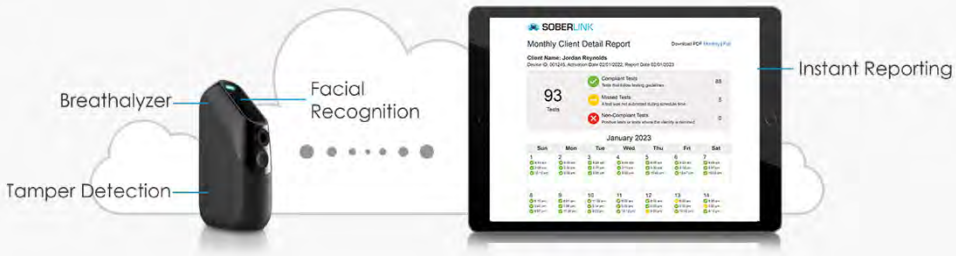
SOBERLINK
Improving Lives

The Soberlink Solution



Monitor alcohol anytime from anywhere in real-time

3

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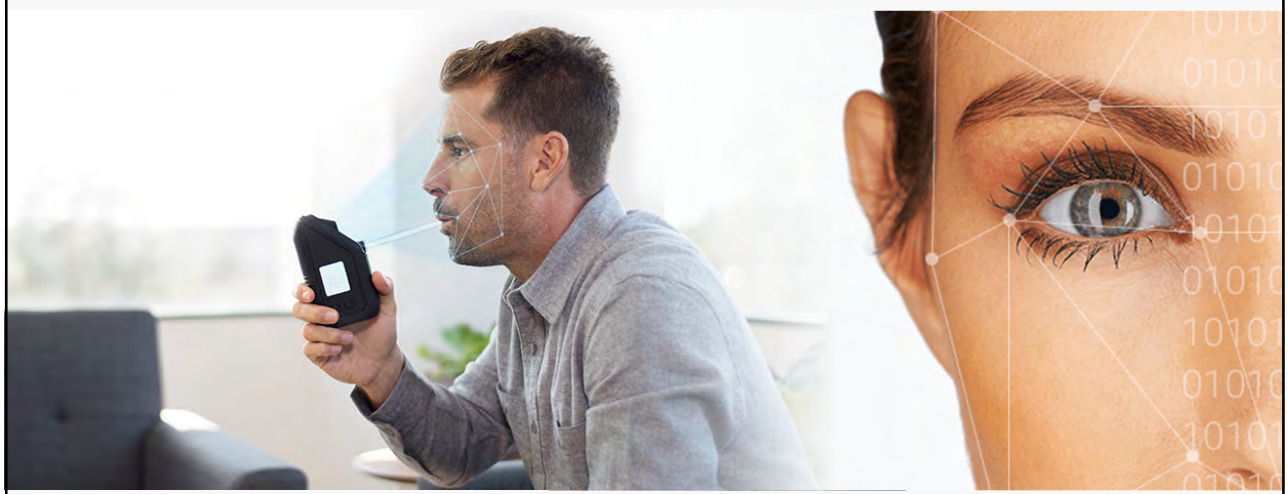
Facial Recognition



4

SOBERLINK Improving Lives

The Soberlink Solution

The first handheld, remote alcohol monitoring designed for real-time results.

Over 100,000 users since 2011, used in all fifty sates .

Top Quality
Reliability and security you can trust since 2011

FDA Cleared
For Medical Use and held to the highest medical standards

ISO Certified
Assembled in the USA under ISO certifications

Tamper Resistant
Detects a wide variety of tampering attempts

Admissibility
Passes Frye and Daubert Standards

Law Enforcement
Accepted by law enforcement/courts since 2011

5

SOBERLINK Improving Lives

Device Options

Soberlink Cellular

The all-in-one Cellular device send tests from cellular connectivity. A smartphone is not needed.

Soberlink Connect

The smaller Connect device send tests from WIFI or cellular connectivity via Apple or Android smartphone app.

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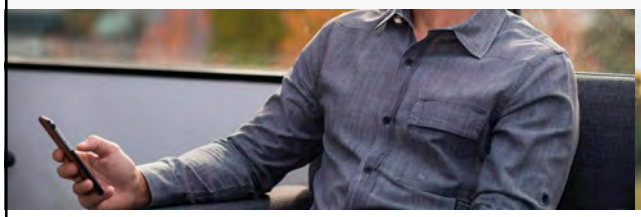
SOBERLINK Improving Lives

Direct-to-Client Family Law Programs

Level 1 Parenting Time Only	Level 2 Daily Testing (7 Days a Week)
• 20 testing **days** per month • Test times managed by Monitored Client and Concerned Party	• **7 days** a week • Managed by Soberlink • Automated text reminders sent to Monitored Client



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SOBERLINK Improving Lives

Soberlink Monitoring Agreement Terminology

Soberlink Terminology

Involved Parties | Monitored Client | Concerned Party | Contacts

Contacts Receive real-time BAC results via text and/or email:

Attorney/Mediator	Family/Friends	Concerned Party

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SOBERLINK
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Automated Monthly Client Detail Report

9

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Soberlink Best Practices *How to Use Soberlink in Family Law*

- Responding to a Missed Test
  - **Missed test**: A test that is not submitted within the agreed upon timeframe
  - Not grounds for immediate change to parenting plan
  - Use rational discussion vs. immediate consequences (Re-evaluate testing schedule)
- Responding to a Positive Test
  - **Positive tests → immediate action**
  - Consider history of alcohol abuse:
    - When positive test occurred
    - If parent self-disclosed the drinking episode
  - Removal of child or loss of next parenting time period.
    - Have Clear language in Parenting Plan.
  - Multiple positive tests may require more comprehensive intervention

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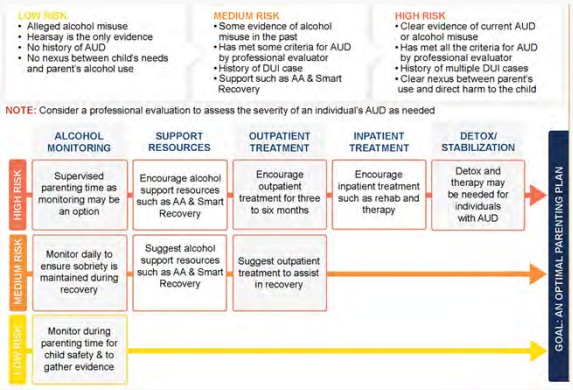

AUD Bench Card guides you through tools to consider

- Medical Detox
- Inpatient Treatment
- Outpatient Treatment
- Support Groups
- Supervised Visitations
- Monitoring "Anchor Tool"

Note: This is not an assessment tool

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Getting Started

Clients can easily get set up from their comfort and safety of their own home.

Typical Set Up	Soberlink Set Up

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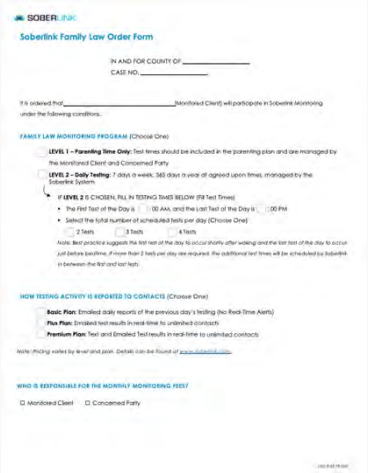
Family Law Order Form

- Use this simple two-page form to ensure Soberlink follows the Court Order.
  - Orders are often written incorrectly, ordering clients to do things that the Soberlink system cannot support



SOBERLINK

Soberlink Family Law Order Form

IN AND FOR COUNTY OF _____
CASE NO. _____

It is ordered that _____ [Monitored Client] will participate in Soberlink Monitoring under the following conditions:

FAMILY LAW MONITORING PROGRAM (Choose One)

☐ **LEVEL 1 – Parenting Time Only:** Test times should be included in the parenting plan and are managed by the Monitored Client and Concerned Party

☐ **LEVEL 2 – Daily Testing:** 7 days a week, 365 days a year at agreed upon times, managed by the Soberlink System

↳ **IF LEVEL 2 IS CHOSEN, FILL IN TESTING TIMES BELOW (Fill Test Times)**

- The First Test of the Day is ☐ :00 AM, and the Last Test of the Day is ☐ :00 PM
- Select the total number of scheduled tests per day (Choose One)

☐ 2 Tests ☐ 3 Tests ☐ 4 Tests

Note: Best practice suggests the first test of the day to occur shortly after waking and the last test of the day to occur just before bedtime. If more than 2 tests per day are required, the additional test times will be scheduled by Soberlink in between the first and last tests.

HOW TESTING ACTIVITY IS REPORTED TO CONTACTS (Choose One)

☐ **Basic Plan:** Emailed daily reports of the previous day's testing (No Real-Time Alerts)
☐ **Plus Plan:** Emailed test results in near-time to unlimited contacts
☐ **Premium Plan:** Text and Emailed Test results in real-time to unlimited contacts

Note: Pricing varied by level and plan. Details can be found at www.soberlink.com.

WHO IS RESPONSIBLE FOR THE MONTHLY MONITORING FEES?

☐ Monitored Client ☐ Concerned Party

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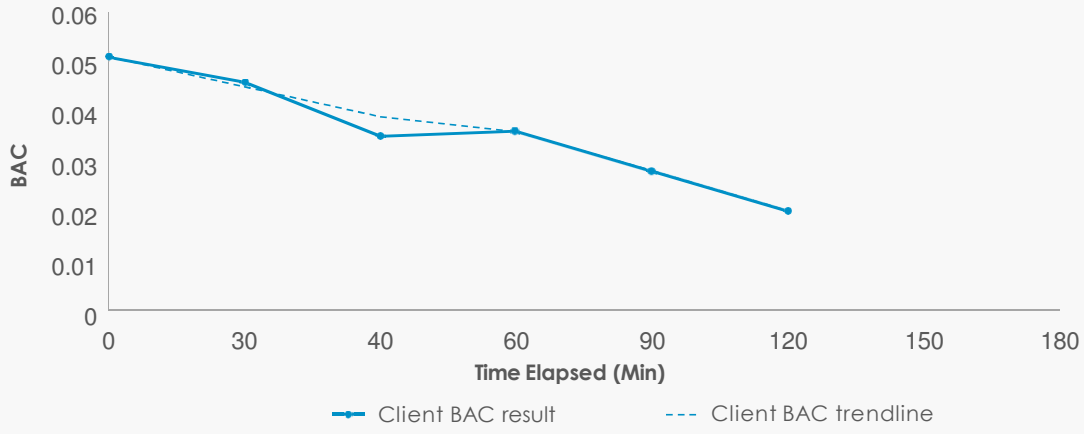
Resources

Compliance Department: Example of a Drinking Event



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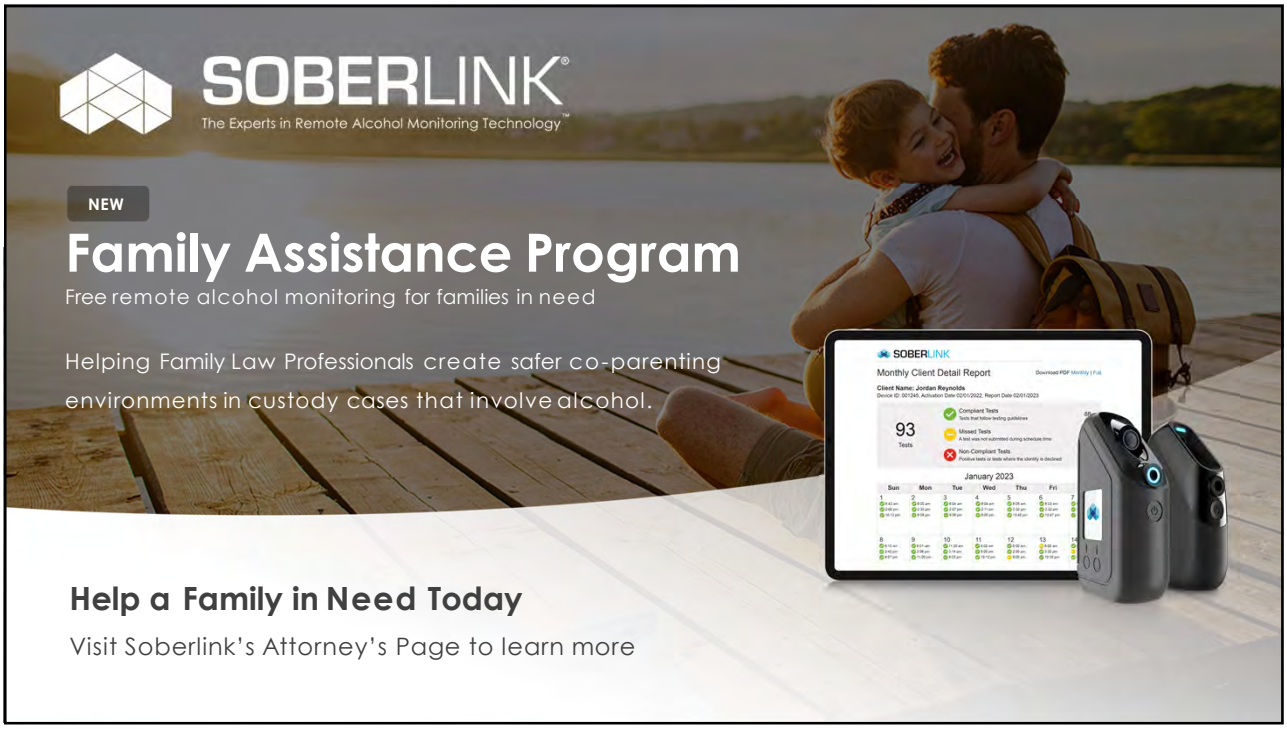
SOBERLINK
The Experts in Remote Alcohol Monitoring Technology
NEW
Family Assistance Program
Free remote alcohol monitoring for families in need
Helping Family Law Professionals create safer co-parenting environments in custody cases that involve alcohol.
Help a Family in Need Today
Visit Soberlink's Attorney's Page to learn more

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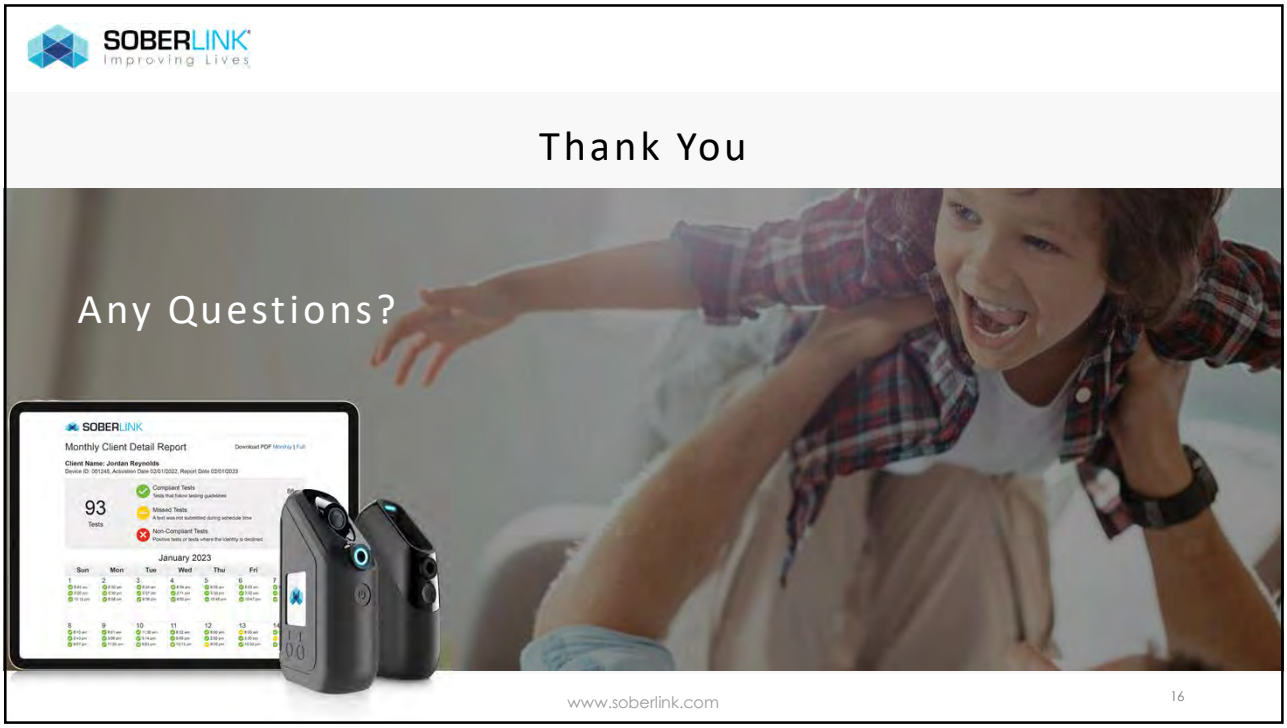
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Thank You
Any Questions?
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Juvenile v. Family Court

What happens to your Family Court case when the Court appoints a BIA to determine fitness of both parents?

Statutes

A.R.S. 8-201(15) – "Dependent Child"

(a) Means a child who is adjudicated to be:

i. In need of proper and effective parental care and control and who has no parent or guardian, or one who has no parent or guardian willing to exercise or capable of exercising such care and control.

ii. Destitute or who is not provided with the necessities of life, including adequate food, clothing, shelter or medical care.

iii. A child whose home is unfit by reason of abuse, neglect, cruelty or depravity by a parent, a guardian or any other person having custody or care of a child.

A.R.S. 8-801(3) – "In-home Intervention"

In-home intervention means a program of services provided pursuant to article 14 of this chapter while the child is still in the custody of the parent, guardian or custodian.

A.R.S. 8-807 – DCS information; public record; use; confidentiality; violation; classification

(C) The department shall disclose DCS information to a court, a party in a dependency or termination of parental rights proceeding or the party's attorney, the foster care review board or a court appointed special advocate for the purposes of and as prescribed in this title.

(D) The department shall disclose DCS information to a domestic relationship, family or conciliation court if the DCS information is necessary to promote the safety and well-being of children. The court shall notify the parties that it has received the DCS information.

(F) The department may provide:

3. Access to DCS information to the parent, guardian or custodian of a child if the DCS information is reasonably necessary to promote the safety, permanency and well-being of the child.

ARFLP 5.1 – Simultaneous Dependency and Legal Decision-Making/Parenting Time Proceedings

(a) **Transfer to Juvenile Division**. IF pending family law and dependency proceedings concern the same parties, the juvenile division has jurisdiction over the children**.**

(1) *Notice*. The parties must notify the family division of a pending dependency proceeding.

(2) *Effect of Transfer*. If the proceedings are transferred, the juvenile division will hear legal decision-making and parenting time issues until the dependency is dismissed or the juvenile division defers jurisdiction to the family division.

(b) **Referral to Family Division.** If the juvenile division determines that a change of legal decision-making or parenting time is appropriate, it may refer the matter to the family division for further proceedings.

(c) **Support Orders.** During any dependency or guardianship proceeding in the juvenile division, the juvenile division may establish, suspend, modify or terminate a child support order. Except in Title IV-D cases, the juvenile division also may make appropriate orders regarding any past due support or child support arrears and my direct that an income withholding order be quashed or modified. Any order regarding child support must be filed in both the family division and the juvenile division.

A.R.S. 25-103 – Purposes of title; application of title

A. It is declared that the public police of this state and the general purposes of this title are:

1. To promote strong families;

2. To promote strong family values.

B. It is also the declared public policy of this state and the general purpose of this title that absent evidence to the contrary, it is in a child's best interests:

1. To have substantial, frequent, meaningful and continuing parenting time with both parents.

2. To have both parents participate in decision-making about the child.

These need no introduction ….

A.R.S. 25-403

A.R.S. 25-403.01

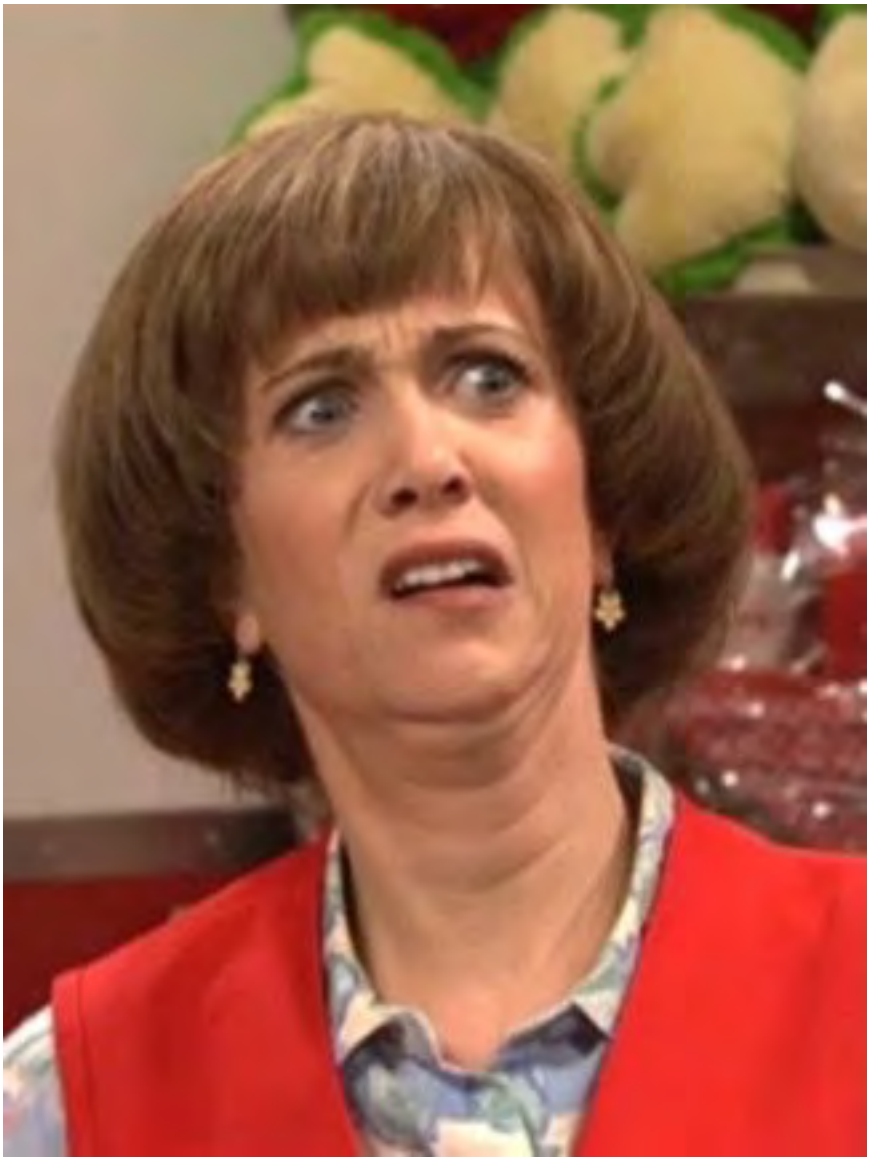
A.R.S. 25-403.03

General information about the Department of Child Safety

DCS Program Policy

https://extranet.azdcs.gov/DCSPolicy/Content/Home.htm?_gl=1*1280z7b*_ga*MTY3MDU3NjMzOC4xNjg2MDE4NTEy*_ga_NPZ440ZV6G*MTY4NjAxODUxMS4xLjEuMTY4NjAxODY1NS4wLjAuMA..

DCS is involved; now what?



Process of FC to JV back to FC

1. **Investigation/Report of BIA/TDM**

TDM: Team Decision Meeting:

When a child is removed, or it is being considered, a TDM is held, usually at the DCS branch office. The meeting is to discuss the child's safety, issues impacting that safety and where the child will live, if removed from the home. If a child is removed from the parent/guardian/custodian's custody, or if it is being considered, the following are the outcomes of the TDM:

- The child is returned to the parents and no action taken
- The child is returned to the parents/guardian/custodian with requirements pursuant to a Safety Plan
- A Dependency is filed as either an in-home or out-of-home Dependency
- Parents/Guardians agree to a foster situation

Important note:

- Attorneys are permitted to attend the TDM but are greatly limited in their involvement, including inability to ask questions

During the investigation, the Department will ask/analyze the following questions:

1. Is there a combination of safety actions and/or supportive resources such that it can control the identified danger threats and are there sufficient resources within the community or family to control the safety threats?

2. Are the parents/guardians/custodians willing to allow for an in-home implementation of a Safety Plan and have they displayed a willingness to cooperate with the Safety Plan and use the supportive resources identified in the Safety plan?

3. Is the home calm and consistent enough for a Safety plan to be implemented and that all individuals in the home are safe?

4. Can an in-home Safety plan and the identified safety actions control the perceived danger without the results of mental health evaluations?

5. Is the home where parents/guardians/custodians reside suitable such that a Safety plan can be implemented?

2. Filing of Dependency/Removal of Child

3. Preliminary Protective Hearing

This hearing must happen within 5 to 7 days of removal. In reality, it does not always happen that soon.

Present at this hearing is the Attorney General on behalf of the Department, the investigating case manager, the parents, along with appointed attorneys for the parents and the child(ren).

A parent can either:

1. Submit to the Dependency or Enter a No Contest and participate in the services being required by DCS.

2. Deny that a Dependency exists, and the matter is scheduled for an Adjudication Hearing.

4. Adjudication Hearing

This hearing must take place 90 days from the date of service of the Dependency Petition. This is a trial, and the burden is on the Attorney General/Department to provide evidence to support a finding that the child is dependent.

5. Services

If the Court determines that a Dependency exits, then the parents/guardians/custodians will be required to participate in services. Those services generally include counseling, drug testing, classes, etc.

Multiple Report and Review Hearings will be scheduled so that the cooperation and progress of a parent/guardian/custodian can be evaluated.

Note: Any Orders from the Family Court do not apply in a Dependency.

6. Dismissals of Dependency

If one or both of the parents "remediate" in accordance with the requirements of DCS, the child(ren) are returned and the Dependency is dismissed.

NOTE: A dismissal of the Dependency can occur when there is a change of case plan, especially if the case plan is changed to severance and adoption. If a child is out of home in a Dependency for more than 15 months, the Department, via the AG, can file for a change of case plan to severance and adoption.

7. Back to Family Court

The Juvenile Division will transfer the case back to Family Court.

With that transfer, many issues arise, along with questions as it relates to the movement of the case through the Court.

If *both* parents remediate:

- If they are married with no pending Family Court action, no further action is required.

- No Orders can be issued if requested by the parents
- If there are prior family court orders that are appropriate, no further orders are issued.

If *one* parent remediates:

- Further action or orders are required if the parents are not living together and the one remediating parent is required to protect the child from the non-remediating parent.
- If the prior Family Court Orders are no longer appropriate, further orders may be needed.

If there is no pending Family Court case and a new case is established:

- No filing fee is paid, as the Court is initiating a case on behalf of a party
- There is no underlying Petition
- There is no notification to the Family Court division that would trigger any action being taken by the judicial staff and/or judge
- Is a hearing needed? If yes, what would it be titled?
- If there is no underlying Petition, what would need to be filed??

If there is a pending Family Court case:

- Temporary Orders are issued without a hearing
- Take notice if both parents/guardians/custodians were present when the Dependency was dismissed, as the Orders to be transferred to Family Court are entered at that time.
- As there is no Petition filed, many times the Family Court division is not notified of the transfer of the Orders

Dismissal of Dependency/Back to FC

"Minimally adequate" parenting ability standard

> Are the parents, or at least ONE of the parents, minimally able to meet the needs of the child(ren)?
>
> In my experience, DCS will push, pull, and bully a parent into being "minimally adequate" so that the matter can be dismissed.

PRACTICE TIPS

Helping your Clients

What can your clients do to prevent/prepare for DCS?

Mental health – identify any issues with your Client, suggest counseling, medical intervention, etc.

Substance abuse – identify if your Client is struggling with substances. Suggest counseling, meetings, etc.

Protective measures for the children – Besides the parents, who is available to assist the Client with the children? Is there a strong support system?

Domestic Violence – If there is domestic violence in the home, are there protective measures in place to ensure a parent and the children are safe from violence?

JV Cases

The parties are appointed attorneys; they can decline the appointment and they can have private counsel. You can maintain contact with the Court appointed attorney. You can even attend to the

hearings, especially Report and Review Hearings to know the status of the case, the requirements of the Department, where your Client may be struggling, etc.

Just for fun:

The requirements for DCS case workers:

Practice Guidelines for DCS

https://extranet.azdcs.gov/DCSPolicy/Content/Practice%20Guides%20&%20Additional%20Info/Practice%20Guides%20&%20Additional%20Info.htm

Please keep in mind that these case workers are overworked, understaffed, and greatly unprepared for the magnitude of these cases. Frustrations are common, as are mistakes. The need for case workers if far greater than the available case workers. This is where we as Family Law attorneys are able to guide our clients, identify potential issues and encourage your clients to seek help, support, etc.

Pima County Juvenile Court

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Family Law Protocol
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Table of Contents

Preface

The Pima County Juvenile Court Family Law Protocol (hereinafter "Protocol") was developed to address issues arising at the intersection of family and juvenile court and to facilitate case coordination when family law orders will resolve a dependency. This Protocol addresses how to create accurate and complete legal records and establishes guidelines to streamline and coordinate case management and judicial communication in consolidated cases. Our Protocol committee was intentionally formed to ensure that we best serve families appearing in juvenile court and family court, and to establish clear procedures and support coordination and communication among judges on both benches, attorneys, juvenile court mediators, conciliation court personnel, and the Clerk of the Court's office. This committee has painstakingly worked over multiple years to complete and refine this Protocol. The Protocol was developed with thoughtful and much appreciated input from the following: members of both the family and juvenile benches; Pima County Juvenile Court Mediation Program; Family Center of the Conciliation Court; Clerk of the Court; and representatives from Office of Children's Counsel, Public Defender's Office, Legal Defender's Office, Contract Counsel, Office of Court Appointed Counsel, and the Attorney General's Office.

A version of this document will be available on the PCJCC Website and the full document with attachments will be available on the Intranet. The Protocol will be kept current through periodic review.

I. Document Management and Minute Entry Protocol

A. Consolidation Overview:

1. Dependency (JD) and family law cases (Special Paternity (hereinafter "SP") and Dissolution of Marriage (hereinafter "D") involving the same parties **must** be consolidated by the juvenile court upon dependency adjudication to prevent conflicting orders. P.C. Local Rule 6.2(B). Cases **may, after careful consideration and when appropriate,** be consolidated pre-adjudication. When consolidated, it is for hearing purposes only and each physical legal file remains separate.

2. If juvenile court judge conducts a hearing and/or makes findings or issues orders in a family law case, they must first consolidate the cases, and any family law orders must be issued before the cases are unconsolidated and before dismissal of the dependency. NOTE: Juvenile court judge may *sua sponte* order consolidation pursuant to P.C. Local Rule 6.2(A).

3. If the family court judge needs to address an issue in a family law case that has been consolidated, they can communicate with the juvenile court judge and request that the entire case or certain proceedings thereof be unconsolidated to address limited appropriate issues in the family law matter. P.C. Local Rule 6.2(E); ARFLP Rule 5.1(a)(2); Rule 323 Ariz. R. Juv. P. (effective July 1, 2022).

4. Consolidated juvenile and family law cases will appear on either AGAVE or on the "pending" or "active" family law case reports with an event type of "Stay-Appeal/Exec/Proceedings/Order." This is an administrative stay of the family law case in the case management services system only and is to prevent the consolidated family law case from being dismissed from the inactive calendar during the period the juvenile court case is pending.

5. Absent unusual circumstances, family law cases are not consolidated with private severances until after private severances are set for trial, and then only if deemed appropriate by the assigned trial division.

6. If a third-party or grandparent requests custody or visitation pursuant to ARS § 25-409, these cases should generally not be consolidated and should be resolved by the family law division. Rationale:

   Pima County Local Rule 6.2 (A): a pending family law proceeding may be consolidated with a dependency, guardianship, or private severance proceeding if they involve the "same parties." Often, the two cases may not involve the same parties. Moreover, third-party rights cases are infrequently dealt with in juvenile court and

often are best resolved by those having greater familiarity with the associated case law, rules of procedure, and statutory authority.

7. The court may not consolidate order of protection cases with family law cases. ARFLP, Rule 5(a)(4).

8. To consolidate cases, ORDER: "**IT IS ORDERED** consolidating SP/D #_____ with JD #____ for hearing purposes only."

9. Distribution Lists: When consolidating or un-consolidating cases, include "Consolidation Clerk–Juvenile Court" in the document distribution list. Once consolidated, the consolidation clerk is to be removed from the distribution list.

B. Confidential v. Public Documents:

1. Family law files (SP/D) are public, while dependency files (JD) are confidential under A.R.S. Title 8. To maintain this confidentiality, do not include in any family law minute entry order (hereinafter "MEO"): a) any reference to the JD number (reference only the numerical portion of the JD case number (i.e. JD20170001 becomes 20170001) or b) any information indicating the family is involved in a dependency case.

2. JD minute entry orders (MEO), proposed orders, motions, and other pleadings should **not** list both the SP or D case number and the JD number in the caption or document, as listing both in the caption will cause the document to be filed in both the family law and the dependency files, and listing both within the body of the SP/D document violates the confidentiality requirements of Title 8.

3. The Assistant Attorney General, Department of Child Safety (hereinafter "DCS") caseworkers, child/ren's attorney, and the contract attorneys shall NOT be listed on the family law distribution list. However, their names and appearances may be noted in the SP/D MEO.

II. Two Primary Scenarios When SP/D Orders Will Resolve Dependency

Assessment of whether family law orders are necessary for final resolution of the dependency case should begin early in the case and continually be reassessed to prevent delay in final resolution of the case. See Attachment A: "When Family Law Orders Necessary to Dismiss Dependency."

Do not automatically consolidate cases pre-adjudication. Absent extraordinary circumstances, if pre-adjudication only consolidate cases if necessary to establish paternity and/or legal decision-making/parenting time orders in family law cases with no prior orders, and immediately ensure parties attend parenting plan mediation prior to the family law hearing. If the JD case is pre-adjudication status, post-dissolution decree or post-final order SP modifications not resolved in mediation should generally be

resolved by the family law division without case consolidation. Consolidation of cases is required post-adjudication, but the juvenile judge may unconsolidate if appropriate to allow parenting time, legal decision-making, and/or child support to be resolved in the appropriate division downtown. P.C. Local Rule 6.2(B) and (E).

Two primary scenarios are shown below:

Section A: No existing SP/D case and parenting time and/or legal decision-making orders and/or paternity order will resolve dependency.

Section B: Pima County SP/D case exists and paternity order and/or parenting time and/or legal decision-making orders will resolve dependency.

A. Steps to take if no existing SP/D case:

1. Attorneys: Order the attorney(s) for the parents in JD case to provide assistance as required through the OCAC contract:

   a. "IT IS ORDERED the attorney for mother/father/parents is/are to assist the parent in the independent family law matter by providing services to support resolution of legal decision-making and parenting time issues and shall be compensated for reasonable and necessary time spent providing such services (up to five hours), to be compensated at their contract rate by the Office of Court Appointed Counsel. This order does not impose the responsibilities of attorney of record in the independent family law matter."

      i. Counsel are not appointed to appear as counsel of record in the independent family law matter and shall not appear at any scheduled mediation in the independent family law matter, unless counsel assisting the parents both agree to attend the session.

2. Initiating a Family Law Case:

   a. If no SP or D case exists and both parents present at the PPH (or a subsequent hearing), the attorneys assisting will provide the parent(s) with either:

      i. Acknowledgement of paternity form to establish paternity and obtain SP number; See Attachment C: "Acknowledgement of Paternity Form", **OR**

      ii. A Petition to Establish Paternity (Online Packet #18) for never-married parents when legal decision-making and/or parenting time orders are needed. If the parties agree, packet #18 has a section where the parents may attach an acknowledgement of paternity; **OR**

iii. A Divorce with Children Petition (Online Packet #2) for married couples seeking divorce.

b. Order the attorney(s) to assist the parent(s) in obtaining and completing an acknowledgement of paternity form, and/or Packet #18 (paternity), or Packet #2 (divorce), and all the pleadings needed to secure appropriate orders. Order: **"IT IS ORDERED parent_____ shall file an action to obtain legal decision-making/parenting time and/or paternity by _____ (date), and attorneys for parents shall provide parent(s) with packet ____, and information and support to parents to effectuate service of process."**[i][1]

i. ENCOURAGE ACCEPTANCE OF SERVICE through online packet #21 (for never-married parents) or packet #10 (for married couples seeking divorce) and order attorney(s) to provide parent with packet and to facilitate acceptance of service, if appropriate.

c. At the next hearing, determine if the SP/D petition was filed and served. If the next hearing is too distant in time, consider setting an earlier non-appearance hearing to follow-up with the parent's SP/D filing compliance. NOTE: The concern is that one parent may disengage from the proceedings prior to establishing paternity or obtaining necessary parenting time orders.

B. Steps to take once Pima County SP/D case exists and if family law orders will resolve dependency:

1. **Issue Orders for Attorney Assistance**, if not previously completed.

a. Order the attorney(s) for the parents in JD case to provide assistance in family law case as required through the OCAC contract: See II A1(a) above.

2. **Address Paternity**: Have the attorney(s) inform the judge definitively when and how paternity was established for family law case purposes. If establishment of paternity is

[1] Application and Order for Deferral of Court Fees and Costs may be submitted to court in family law case. If the parent qualifies, grant the waiver or deferral of fees, as appropriate. If the parent has sufficient income, deny the deferral and waiver of fees.
If the court defers fees, order a minimal payment schedule, for example: $30.00 per month. Less than $25.00 per month not recommended because not cost effective for county. *See* ARS § 12-302(L). See Online Packet #12: "Application for Deferral Waiver Affidavit and Order."
The form also provides the judge the ability to waive or defer the fee for the Microsoft Teams or online Domestic Relations Education Class (hereinafter "DREC") provided by Conciliation Court. A parent needs a receipt number issued by the Clerk's office to register for the DREC, and will receive the receipt number even if the parent receives a fee waiver or deferral. If the judge grants the fee waiver or deferral at a hearing such that the waiver/deferral is identified only in the Minute Entry, then the party will need to take that Minute Entry to the Clerk's Office downtown and have a receipt generated.

all that is necessary to dismiss dependency and issue of paternity is uncontested, order attorneys provide to parents Acknowledgement of Paternity form and assist parents to establish paternity, or consolidate cases and call unscheduled hearing in SP/D case and elicit parties' testimony under oath and enter paternity order. See Attachment C "Acknowledgement of Paternity" or Attachment D "Paternity Script."

3. **Address Domestic Relations Education Class:**

   a. Confirm that both parties have completed the mandatory Domestic Relations Education Class (DREC). *See* ARS §§ 25-351 through 25-355. **Court may sua sponte waive requirement that one or both parents attend DREC** pursuant to A.R.S. Section 25-352(A)(1) if it **FINDS** "that participation is not in the best interest of the parties or the child" and orders waiver.

   b. If one or both of parents have not completed the DREC and judge does not waive requirement:

      i. Provide each parent required to take the class with telephone number to sign up for the class: (520)724-5590. Attachment E: "Important Notice for Parents of Minor Children."

         1) An Arizona out-of-county parent may take the DREC in their own county, but it must be a DREC program that has been approved by that county's superior court. The certificate of completion must be filed with the Pima County Superior Court Clerk's Office at 110 W. Congress, Tucson, AZ 85701.

      ii. Order the parent(s) who have not completed the DREC[2] to complete within 30 days and prior to scheduled mediation. Although pre-adjudication parenting plan mediations **do not** require a parent to complete the DREC prior to attending, it is ideal if they are able to do so.

4. Address Mediation Requirement.

   a. **<u>Pre-Adjudication Parenting Plan Mediation Requirements</u>**: These cases do not need a SP/D case in advance to schedule the Parenting Plan Mediation, although it can be helpful. Pre-adjudication mediation to be scheduled only if the **parenting plan agreement would resolve the need for dependency without an adjudication.**

      i. Due to the time sensitive nature of a pre-adjudication case, the following requirements **do not** need to be completed prior to scheduling or holding a

[2] Proof of completion of DREC can be confirmed in the court file in the D/SP case for each parent.

parenting plan mediation session: child placement with parent; SP/D case filing and/or consolidation; or completion of the Domestic Relations Education Class.

b. **Post-Adjudication Parenting Plan Mediation Requirements:**

i. Consolidation: An SP/D case must exist and must be consolidated with open JD case. If a parenting plan mediation is scheduled in the absence of a SP/D case, the mediation will be vacated.

1) Order cases consolidated. See I(A)(8) above.

2) If multiple SP cases exist with the same mother and father, consolidate those SP cases into the lowest SP case number. *See* ARFLP, Rule 5(b).

ii. A child in the case must be placed with at least one parent before setting the mediation.

iii. At a minimum, and prior to commencement of the parenting plan mediation, the parent with whom the minor has been placed must have **completed** the required DREC, or the Court waived the requirement for that parent.

1) Note: If a parent(s) has/have not previously completed the Domestic Relation Education Class, if appropriate the Court may make a finding waiving the requirement. See Section II(B)(3)(a) above.

2) For post-adjudication parenting plan mediations only, schedule a non-appearance status hearing in approximately 35 days to monitor the parents' compliance. At non-appearance, check SP/D file to determine if parent(s) "Notice of Completion" certification is in file. If not in the file, call Conciliation Court at 724-5590 to see if it has indeed been completed and not yet reflected in the file.

1. If, at the time of the non-appearance status hearing, <u>no parent</u> completed the DREC, then the post-adjudication parenting plan mediation <u>must be vacated</u> to recapture the time set aside for use with another family. Vacate the Parenting Plan Mediation in AGAVE and issue an In Chambers Order Vacating Parenting Plan Mediation. The Order has information for the parties about how to reset the mediation once the parents are compliant with the DREC. See Attachment F: "In Chambers Order Vacating Parenting Plan Mediation."

2. If, at the time of the non-appearance hearing, the parent with whom the minor is placed has completed the DREC, then the mediation can go forward as scheduled. However, consider some response regarding the non-compliant parent, such as denying that party relief pursuant to A.R.S. § 25-353 and/or ordering the non-compliant parent to complete the DREC within 30 days.

c. Scheduling a Parenting Plan Mediation Session:

i. Mediation sessions can be requested by the parties, attorneys, or the judge at a hearing, or by self-referral.

ii. If scheduled at a hearing:

1) Follow Parenting Plan Mediation Script. See Attachment G, "Parenting Plan Mediation Script."

2) For post-adjudication parenting plan mediation, schedule the mediation no less than 60 days from the date of the hearing to allow time for the parents to complete the DREC requirement.

iii. Schedule the session for no less than two hours (for cooperative parents with no other issues). NOTE: Consider scheduling additional time if there are other issues either between the parents or in the case that would indicate more time could be needed (e.g. incarcerated parent; interpreter needed; particularly contentious parents; divisive issues; etc.).

iv. **ORDER** detailed position statements from the Department and child/ren's attorney, and order that they be submitted to the assigned mediator **not less than 5 business days prior to the session**. Law clerk/bailiff provides the position statement sheet to the assistant attorney general and the child/ren's attorney. See Attachment H, "Position Statement for Parenting Plan." NOTE: Positions statements should not be filed with the clerk.

5. Post-Session Mediation Program Responsibilities:

a. If one parent fails to complete the DREC and the parents agreed to joint legal decision-making in a parenting plan mediation session, the mediator shall notify the juvenile court judge's JAA to schedule a non-appearance hearing for the judge to follow-up on the other parent's completion of the DREC, and thereafter for the juvenile court judge to take any further action necessary and appropriate regarding the parents' joint legal decision-making agreement. 25-403A(10): Court must

consider whether parent has completed DREC in determining legal decision-making and parenting time.

b. If the parents reach an agreement in the parenting plan mediation session, the mediation program will submit the original parenting plan agreement, and a family law form of Order Approving Parenting Plan to the assigned juvenile court division. The division will manage completion and filing of the original parenting plan in the SP/D case as well as the family law order. See Attachment I, "Parenting Plan Order (FLAW Order Template)."

   i. The mediation program will also file an Outcome Report, with a copy of the parenting plan as an attachment, in the JD case. This is to ensure all parties in the JD case get the proper notification of the agreement reached by the parents.

   ii. NOTE: If the parenting plan is developed pre-adjudication with the intent to resolve the dependency, and there is no SP/D case yet filed, the mediation program will indicate there is no SP/D case number by making a note on the Memo to the Judge that is sent to chambers with the original parenting plan and the FLAW Order Template. The mediation program will also indicate in the JD Outcome Report that there is no SP/D case number. Court cannot adopt orders in SP/D case until case number exists and cases are consolidated.

c. If the parents do NOT reach an agreement in the parenting plan mediation session, the mediation program will file an Outcome Report in the JD case that will include whatever information the parents agree can be disclosed. If the session is scheduled but not held, the Outcome Report will indicate the session was not held.

III. Issuance of family law orders:

Final orders are strongly preferred over temporary orders in SP/D cases, as parties often fail to complete required steps to obtain permanent orders following completion of temporary orders, resulting in dismissal of family law case from inactive calendar and temporary orders are then vacated. **Any time a judge enters a final parenting time and/or legal decision-making order, the judge should ensure the order references ARFLP Rule 78(b) or 78(c), as appropriate, which will prevent the order from being dismissed.** A.R.S. 25-404(A) and (C); A.R.S. 25-817(C).

The following are various avenues for resolution of family law matters through issuance of final court orders.

A. Stipulation by Parties (reached through or outside of mediation):

1. Order cases consolidated, if not previously ordered. See I(A)(8) above.

2. If SP case, ensure paternity order is included or was previously ordered. Mediation program will have parties execute stipulation regarding paternity if agreed upon and if not previously established through court order.

3. In all cases, review and, if appropriate, sign the:

   a. FLAW Order approving the Parenting Plan provided by mediation. Or, can defer issuing order to time of next dependency review hearing to obtain more information regarding parties' positions. See Attachment I: "Parenting Plan Order (FLAW Order Template)."

   b. Child Support Reminder: **Every parenting plan order entered, whether original or modified, requires the court to determine an amount of child support. *See* ARS § 25-403.09(A).** ARFLP Rule 47(c)(3) provides "court must determine an amount of child support" for any temporary parenting time hearing entered under Rule 47.

      i. If submitted and appropriate, sign child support worksheet, child support order, and Income Withholding Order. If not submitted, set child support status hearing as set forth below. If court enters a final parenting and legal decision-making order but does not resolve child support, **judge must check box on FLAW Order template (Attachment I) ordering final judgment pursuant to Rule 78(b) and noting unresolved issue is child support.**

      ii. In all SP cases (whether IV-D or not), where a final order is issued for parenting time and legal decision-making, the Court shall:

         1) Schedule a thirty-minute status hearing to address child support in IV-D division on a date and time approved by the IV-D division's JAA. NOTE: **As a matter of professional courtesy and for calendar management, do not schedule matters on downtown judge's calendar without approval of date/time in advance through the division's JAA or judge**. The juvenile court's courtroom clerk cannot calendar on AGAVE for any downtown divisions. Therefore, the IV-D division must set the hearing. The juvenile court's courtroom clerk can include the date in the family law minute entry, however.
         2) Issue ORDER in SP case containing child support status hearing date and ordering parties to attend. If possible, Court shall supply hearing date to parents in open court. Use Attachment J: "Order Setting Child Support Status Hearing."

iii) If the juvenile court judge issues any parenting time/legal decision-making orders in a D case or temporary orders in any SP case, before cases are unconsolidated have JAA in assigned family law division provide a date and time for a thirty minute status hearing in the family law division to address determination of child support, completion of remaining dissolution issues and entry of decree in a D case, or additional scheduling to obtain final orders in an SP case. **Be sure to provide this date to parties on the record, if possible, and to include date, time and location/telephone call-in code of hearing in family law MEO.**

1) Instruct the courtroom clerk to include the 'Clerk's Office Child Support Division' on this MEO distribution.

c. **IMPORTANT:** Obtain current addresses for each party in the SP/D case so the Minute Entry Order (MEO) will be sent to them directly.

4. In JD case:

a. If the Assistant Attorney General and Child/ren's Attorneys agree that the legal decision-making/parenting time order resolves the dependency, ask for a motion to dismiss the dependency when appropriate.

i. Court must enter any appropriate SP/D case orders necessary and unconsolidate cases prior to dismissal of dependency per section IV below.

B. Only One Parent Involved and Actively Participating in Dependency:

If only one parent is involved in the dependency case and paternity has been established, court may order affirming legal decision-making with the involved parent in the SP/D case pursuant to A.R.S. § 25-803(D), which states: "In any case in which paternity is established, the parent with whom the child has resided for the greater part of the last six months, shall have LDM unless otherwise ordered by the court." In consolidated SP/D case, FIND Child(ren) has/have been placed with parent for last six months or greater, and COURT THEREFORE AFFIRMS pursuant to A.R.S. § 25-803(D) that parent ____ has legal decision-making authority for the child(ren) :_____, pending further court order.

C. <u>If Parties are Unable to Resolve Issues through Mediation</u>: Schedule appropriate evidentiary hearing and appoint either counsel for minor or best interest attorney in family law case.

Court should not schedule hearing for legal decision-making, parenting time, and/or child support unless appropriate petition has been filed, as required under ARFLP.

Hearing cannot go forward unless respondent is served with notice of hearing and petition, or if party makes a voluntary appearance pursuant to ARFLP, rule 40(f)(2). Counsel assigned to assist parents in family law cases can and should facilitate service of process through acceptance of service. ARFLP Rule 40(f).

For modification of existing D or SP orders pre- or post-adjudication, or to establish first parenting time orders post-adjudication, there is a strong preference the family law hearing be set in the assigned family law division. This will increase the likelihood the division with prior knowledge of the family, if applicable, will make the determination, and/or will allow judicial officers on the family law bench with ongoing immersion in family law procedural rules and substantive law to resolve family law issues. However, the juvenile judge may elect to retain and resolve the family law parenting time and/or legal decision-making issues, if appropriate.

If parties are unable to resolve necessary issues related to parenting time and/or legal decision-making in mediation, and if the parties filed appropriate pleadings, the court may appoint either counsel or a best interests attorney for the minor(s) in the family law case:

1. If Office of Children's Counsel represents minor(s) in JD case, in SP/D case make finding: "**THE COURT FINDS** the minor(s) may be the victim of child abuse or neglect as defined in A.R.S. section 8-201, therefore **IT IS ORDERED** that [insert name of attorney for the minor(s) in JD case] is appointed as attorney for the minor(s) in the independent family law matter." ARFLP, Rule 10(f). See Attachment B: "Order Appointing Attorney/Best Interest Attorney for Minor(s)."

2. If contract counsel represents minor(s) in JD case, in SP/D case make finding: "**THE COURT FINDS** the minor(s) may be the victim of child abuse or neglect as defined in A.R.S. section 8-201, therefore **IT IS ORDERED** that Office of Children's Counsel is appointed as best interest attorney **OR** attorney for the minor(s) in the independent family law matter." ARFLP, Rule 10(f). See Attachment B: "Order Appointing Attorney/Best Interest Attorney for Minor(s)."

The Court then can select from the two options below regarding scheduling of the family law hearing:

1. For modification of prior SP/D parenting time orders or for issuance of first parenting time orders post-adjudication: schedule resolution management conference to address legal decision-making and/or parenting time and child support in the assigned family law division, with the family law division's JAA approving the date and time in

advance. If possible, the juvenile court judge shall supply hearing date to parties in open court.

OR,

2. The juvenile court may elect to retain and resolve the parenting time issues in the SP/D case (preferred for pre-adjudication cases when establishment of paternity and/or issuance of first parenting time orders will resolve need for dependency):

   a. Confirm a party has filed appropriate pleadings in the family law case requesting orders for parenting time, legal decision-making, etc., and they have served the other party in a method permitted under ARFLP.

   b. Ensure cases have been consolidated and schedule hearing dates for either temporary or permanent (depending on pleadings filed) parenting time and legal decision-making orders in SP/D case.

      i. For permanent orders hearing: order pre-trial statements (to include witnesses and exhibits) and completion of a proposed parenting plan (Online Packet #9).

      ii. If parties request a temporary orders hearing pursuant to ARFLP Rule 47, the Court must FIND that the circumstances of the case demonstrate that a resolution management conference would not serve the interests of efficiency and set the evidentiary hearing on parenting time/legal decision-making/child support hearing not later than 60 days after the motion is filed. Rule 47(c)(2).

   c. At SP/D parenting time/legal decision-making hearing:

      i. Call the SP/D case number only (not the JD). Show the Petitioner, Respondent, and any attorneys appearing in the SP/D matter. Issue parenting time and legal decision-making orders (see III(C)2(d)i-iii below).

   d. When issuing final parenting time and/or legal decision-making orders, the judge must take into consideration the factors listed in ARS §§ 25-403 and 25.403.09, and make specific findings on the record or in a written order. **Reminder: final parenting time and/or legal decision-making orders must reference ARFLP Rule 78(b) or 78(c) to prevent dismissal.** Specific findings under A.R.S. 25-403 et seq. are not required for issuance of temporary orders, although some basic findings will be helpful to the family law case in considering final orders. *Gutierrez v. Fox*, 242 Ariz. 259 (App. 2017).

      i. Recommended process when parenting plan includes supervised parenting time: If the court orders any type of supervised parenting time (i.e. relative

or professional), the juvenile court judge should schedule a review hearing in front of the assigned family law judge (through the assigned judge's JAA) within 90 days, unless a later hearing date is appropriate.

ii. Prior to scheduling a hearing on a downtown division's calendar, contact the division's JAA to obtain a date and time, and ideal to provide parties with hearing date, time, and location on the record.

iii. Drug test orders: Orders for drug testing must comply with the format and procedures promulgated by the family law division of the Superior Court. Confer with assigned family law division's JAA to ensure appropriate orders completed. See Attachment K: "Averhealth Drug Test Order Information."

D. Following juvenile court's issuance of parenting time and/or legal decision-making orders, must ensure appropriate follow up hearing is set downtown.

1. In all SP cases (whether IV-D or not), when final parenting time and legal decision-making orders are issued and child support has not been addressed, schedule a thirty-minute status hearing to address child support in IV-D division on a date and time approved by the IV-D division's JAA.

   a. Issue order in SP/D case containing hearing date and ordering parties to appear. If possible, Court shall supply hearing date to parents in open court. Use Attachment J: "Order Setting Child Support Status Hearing."

2. When any parenting time/legal decision-making orders are issued in a D case or temporary parenting time/legal decision-making orders are issued in a SP case, the juvenile judge will schedule a status conference downtown before the assigned family law judge to allow the family law division to schedule a hearing to resolve child support and/or issue final dissolution and/or parenting time orders. The juvenile judge or JAA will contact the family law division's JAA to obtain a status hearing date. (**It is strongly recommended to obtain a date/time from the downtown division in advance of your hearing to provide to the parties in open court.)**

   a. NOTE: **As a matter of professional courtesy and for calendar management, do not schedule matters on FL or IV-D judge's calendar without approval of date/time in advance through the division's JAA or judge**. The juvenile court's courtroom clerk cannot calendar on AGAVE for any downtown divisions. Therefore, the family law or IV-D division must set the hearing. The juvenile court's courtroom clerk can include the date in the family law minute entry, however.

   b. Courtroom clerk should obtain current address/email for parties in family law to include in SP/D MEO distribution list so they will receive copies of orders.

c. Ensure that the courtroom clerk adds the Superior Court Case Management Services office to the distribution list. In EDocs it is under the Agency tab as: Case Management Services – Family Law, or the clerk can add them manually through their email: CSFL@sc.pima.gov

E. Default:

1. If all of the requirements are met for a default judgment (ARFLP Rule 44.1: without a hearing, Rule 44.2: with a hearing), you may order Legal Decision Making, Parenting Time, and Child Support through default. Ensure service has been accomplished on non-appearing parent as required by ARFLP.

   Reminder: If the court orders any type of supervised parenting time, see III(C)(2)d(i) above.

2. The Court cannot enter orders for joint legal decision-making in a default hearing unless the respondent has paid the appearance fee and the respondent attended the Domestic Relations Education Class.

IV. CLOSE OUT/UNCONSOLIDATION PROCEDURES:

A. Include JD Case Reports in the SP/D Case file: Prior to un-consolidating the cases, the juvenile judge shall order that appropriate reports, such as the Preliminary Protective Hearing (PPH) Report, the Permanency Hearing Report, and the last DCS Progress report be placed under seal in the family law file. This procedure will provide the family law judge access to the reports regarding the previously consolidated juvenile matter so that the family law judge is on similar informational footing as the parents who were involved in the dependency.

1. To file the DCS reports referenced above in the SP/D case, find and order as follows:

   a. In Chambers or bench ruling:

      i. **FIND**: Pursuant to ARS § 8-807(D), the Court has determined a review of the DCS information by the family court judicial officer is necessary to promote the safety and well-being of the minor children involved in this matter**.**

      ii. **Order**: "It is ordered that the reports considered by this Court from the consolidated case, (name the reports needing to be filed under seal, i.e., the PPH/Permanency/Final Report, etc.) shall be placed

under seal in the SP or D legal file, only to be opened by a judicial officer. There shall be no further dissemination of these reports absent a court order issued by the family court judicial officer in compliance with ARS § 8-807(D)."

iii. On the MEO ensure that the "Clerk of Court – Exhibits Supervisor" and the "Clerk of Court – Legal Records Supervisor" are on the distribution list. This will ensure the physical documents get to the clerks who are responsible for transferring the physical paperwork to the downtown court.

iv. Request that the courtroom clerk deliver the reports to either the "Clerk of Court – Exhibits Supervisor" and/or the "Clerk of Court – Legal Records Supervisor" for proper delivery and sealing at the downtown court.

B. **Unconsolidation Order:**

1. Issue any necessary family law/parenting orders in SP/D case **prior to** unconsolidating.

2. If counsel was appointed to represent the minor(s) in the family law case, **ORDER** relieving counsel from further responsibility representing the minor(s) in SP/D case Number _____.

3. Order the SP/D unconsolidated from the JD case when ready to dismiss the dependency.**"It is ordered un-consolidating case JD# from the SP/D case. The child/ren is/are placed with _____ (mother/father etc.). The dependency is dismissed, counsel for the parents and the minor are relieved of further responsibility in JD#, and it is ordered removing the child/ren from the active computer list."**

V. Notification of family court of termination of the parental rights of a party.

A. If a judge in a JD or private severance case terminates the rights of parent(s), and a SP/D case exists and has not been consolidated, consolidate cases, call unscheduled hearing in the SP/D case, and "FIND that on [insert date of termination] another division of this court has terminated the parental rights of [insert name of terminated parent(s)] to [insert name of specific noted child(ren)]." This finding will assist the judge in the family law case should a parent whose rights have been terminated attempt to obtain rights in the family law case. Unconsolidate cases when done.

VI. Clerk's Office / Document Filing

A. The Juvenile Court Clerk's office will accept initial filings to initiate an SP/D, but no follow-up documents will be accepted. The follow-up documents must be filed downtown.

B. The courtroom clerks will not accept any in-court document filings for SP/D matters.

C. Only judges are permitted to file the Parenting Plan Order for the SP/D case, and they must do so only through the Clerk's basket in the judicial workroom.

D. Change of Address forms for SP/D cases will still be accepted in open court by the juvenile courtroom clerks.

VIII. Attachments and Forms:

Attachment A, "When Family Law Orders are Necessary to Dismiss Dependency"

Attachment B, "Order Appointing Attorney/Best Interest Attorney for Minor(s)"

Attachment C, "Acknowledgement of Paternity" (mother married and unmarried)

Attachment D, "Paternity Script"

Attachment E, "Important Notice for Parents of Minor Children"

Attachment F, "Order Vacating Parenting Plan Mediation"

Attachment G, "Parenting Plan Mediation Script"

Attachment H, "Position Statement for Parenting Plan"

Attachment I, "Parenting Plan Order (FLAW Order Template)"

Attachment J, "Order Setting Child Support Status Hearing"

Attachment K, "Averhealth Drug Test Order Information"

Arizona Superior Court in Pima County Online Forms:

Click on links below or go to https://www.sc.pima.gov/law-library/forms/

1. Packet #18: Petition to Establish Paternity
2. Packet #2: Divorce with Children Petition
3. Packet #21: Service on the Other Party for Paternity
4. Packet #10: Service on the Other Party for Dissolution, Legal Separation, and Annulment

5. Packet #12: Application for Deferral/Waiver Affidavit and Order
6. Financial Affidavit- Child Support Only
7. Instructions for Financial Affidavit: Child Support Only
8. Packet #9: Parenting Plan

Attachment A: When Family Law Orders are Necessary to Dismiss Dependency

Arizona cases *Meryl R. v. Dep't of Econ. Sec.*, 196 Ariz. 24 (Ct. App. 1999); an unpublished case *Sofia C. v. Dep't of Child Safety*, No. 2 CA-JV 2015-0084, 2015 WL 5332227 (Ariz. Ct. App. Sept. 14, 2015); and *In re Pima Cty. Juv. Action No. J-77188*, 139 Ariz. 389 (Ct. App. 1983) provide a framework for when family law orders are necessary to dismiss dependency. The guidelines set forth below should be considered within the context of the facts of the particular case and Arizona caselaw.

A. Family Law Orders Necessary

1. Legal Decision-Making ("LDM") A.R.S. § 25-403 et seq

    a. Current LDM Order in D or SP case gives sole LDM or joint LDM with final say to parent who will not be the primary residential parent after the dependency terminates. Change to sole LDM to other parent or joint LDM to both parents if it appears both parents are able to make major decisions for the minor child(ren).

    b. Current LDM Order in D or SP case gives parties joint LDM and one of the parents is absent or not able properly to make major decisions for minor child(ren). Change to sole LDM to other parent.

    c. There is an open D or SP case in which neither parent has been formally awarded LDM.[1] Give parent who will be exercising primary Parenting Time ("PT") sole LDM or award both parents joint LDM if it appears both parents are able to make major decisions for the minor child(ren)

    d. The parents are not married, no SP case has been opened, and the parent exercising primary PT is the father. Open SP case, make sure paternity is established by court order, and enter LDM orders in favor of father, either sole LDM or, if feasible, joint LDM

2. Parenting Time ("PT") A.R.S. § 25-403 et seq

    a. Current PT Order in D or SP case is contrary to the PT arrangement after dependency terminates. Amend PT Order in family case to match post-dependency PT arrangement.

    b. The parents are not married, no SP case has been opened, and the parent exercising primary PT is the father. Open SP case, ensure court order establishing paternity is issued, and enter PT orders to match post-dependency PT orders.

[1] This situation often occurs when there is a IV-D case in which only child support orders have been entered

c. There is an open D or SP case in which there are no formal PT orders or the PT orders are not specific (e.g. "Parenting time to father as agreed between the parties"). Enter PT orders to match post-dependency PT orders.

3. Child Support

While in a perfect world the Juvenile Court judge would refigure child support, doing so is difficult because evidence relevant to child support is not usually available, the Juvenile Court judge does not have ready access to information on child support arrearages, contract counsel are not supposed to get involved in child support matters, and if there is an open IV-D case, the IV-D division of the Attorney General's Office has to be involved. Refer child support per protocol to the assigned family law judge if the family law division will also be addressing matters of PT and/or LDM. If child support is only remaining issue after final SP orders have been issued, set on IV-D division calendar as addressed in protocol.

B. Family Law Orders Not Necessary

1. Legal Decision Making

a. Current LDM Order in SP or D case awards sole LDM or joint LDM with final say to parent who will be exercising primary PT after termination of dependency.

b. Current LDM Order in SP or D case gives parents joint LDM and the judge determines that despite whatever led to the dependency or the post-dependency PT arrangements, the parent will be able to make major decisions regarding the minor child(ren).

c. The parents are not married, no SP case has been opened, and the parent exercising primary parenting time after termination of the dependency is mother.

2. Parenting Time.

a. Current PT Order is SP or D case awards discretion to parent who will be exercising primary PT after termination of dependency to determine other parent's PT.

b. The parents are not married, no SP case has been opened, and the parent exercising primary parenting time after termination of the dependency is mother.

C. Special Considerations Regarding Married Parents

Married parents presumptively have joint and several LDM as well as joint and several PT rights. A judge cannot enter LDM or PT orders affecting married parents except in the framework of a Dissolution action. If family law orders are necessary, one of the parents will have to file a Dissolution action. The court cannot, however, order a party to file a Dissolution action in the same manner a court can order a parent to file a Special Paternity Action because ordering a person to file for divorce arguably violates public policy. Thus, if a judge is called upon to terminate a dependency action involving married parents when one of the parents has been non-complaint with services and the compliant parent does not want to file for divorce, the dependency should be terminated only if the judge is persuaded that the parent with whom the child(ren) will reside will adequately protect them from the non-compliant parent.

Attachment B: Order Appointing Attorney/Best Interest Attorney for Minor(s)

Pursuant to A.R.S. Section 25-321 and Rule 10 of the Arizona Rules of Family Law Procedure,

THE COURT FINDS:

1. The best interest of the minor child**(ren)**, _____, cannot be adequately **protected** by either of the parties to this action.

2. The appointment of a Minor's Attorney **OR** Best Interest Attorney for the minor child**(ren)** will serve the best interest of the minor child**(ren)**.

3. The parties are unable to share in or assume the cost of such appointment without incurring unreasonable financial hardship.

IT IS ORDERED AS FOLLOWS:

1. Appointing _____ Esq. as Minor's Attorney **OR** Best Interest Attorney for the minor child**(ren)** in this matter.

2. The Minor's Attorney **OR** Best Interest Attorney for the minor child**(ren)** shall have access to all of the child**(ren)**'s educational, medical and psychological records.

3. The Clerk of the Court is authorized to make and provide a copy of the file to the Minor's Attorney **OR** Best Interest Attorney at no cost to the attorney.

4. The Minor's Attorney **OR** Best Interest Attorney for the minor child**(ren)** shall be allowed to interview the minor child**(ren)** alone and away from the family residence.

5. There shall be contempt sanctions for anyone who questions the minor child**(ren)** about the child**(ren)**'s interview with the Minor's Attorney **OR** Best Interest Attorney**.**

Obtain self-represented parties' (or counsel if retained) email addresses in SP/D cases to CC on MEO.

Attachment C: Acknowledgment of Paternity (Unmarried Mother)

(1) Person Filing: _____

Mailing Address: _____

City, State, Zip Code: _____

Daytime Phone: _____

Evening Phone: _____

Representing: [ ] Self [ ] Petitioner [ ] Respondent

State Bar Number (if applicable) _____

ARIZONA SUPERIOR COURT, COUNTY OF PIMA

(2) _____
Person Filing

_____
Other Parent

(3) Case No. _____

ATLAS No. _____

VOLUNTARY PETITION FOR ORDER OF PATERNITY
A.R.S. § 25-812

The Clerk is requested to issue an order establishing paternity for the following child(ren):

(4) Full Name on Birth Certificate	Date of Birth	Place of Birth (City, County, State, and Country)
_____	_____	_____
_____	_____	_____
_____	_____	_____

The natural mother of the child[ren] was not married when the child[ren] was born or at any time throughout the 10 months immediately preceding such birth.

(5) This petition is based on, (Check one box only)

[ ] **Affidavit of Acknowledgement**: By signing this, we agree and acknowledge that _____ is the natural father of the child(ren) named above.

[ ] **Genetic Testing and Laboratory Affidavit**: Attached is an affidavit from a certified laboratory indicating that _____ has not been excluded as the natural father of the child(ren) and we agree to be bound by the results of this genetic test.

Case No. _____

Both parties must sign this form or an attached notarized affidavit to change a child(ren)'s name

(6) The parents request the Office of Vital Records amend the birth certificate(s) to change the child(ren)'s name(s) from: to:

_____ _____

_____ _____

_____ _____

(7) The following information is required:

Mother's Full Name

_____

Date of Birth Mother's Maiden Name

_____ _____

Mother's Address

_____

_____

Father's Full Name

_____

Date of Birth Place of Birth (City, County, State, and Country)

_____ _____

Father's Address

_____

_____

Case No. _____

IMPORTANT NOTICE READ
THIS BEFORE YOU SIGN

Arizona state law requires that before voluntarily acknowledging paternity, you be given notice of the alternatives to, the legal consequences of and the rights and responsibilities that result. Here are some of the things you should know.

→ No one is required to voluntarily acknowledge paternity

→ You have the right to seek legal advice before signing this document

→ If you are unsure who the father is, an alternative is to have genetic testing done.

After you have agreed to voluntarily acknowledge paternity, the Clerk of the Court or authorized court personnel will issue an order legally establishing the father. This Order is the same as a judgment of the Superior Court. After the Order is issued, both parents will have all the rights and responsibilities of parents as required under Arizona Law. This Order does not decide issues about child support, parenting time or legal decision-making. However, the Order includes a statement of Arizona Law that the parent with whom the child has resided for the greater part of the last 6 months shall have legal decision-making, unless otherwise ordered by the Court.

Arizona Law allows either parent to rescind the acknowledgment of paternity if certain requirements are met. You may have up to 60 days to do this. See § 25-812(H) of the Arizona Revised Statutes.

Do not sign this form until you are before the Clerk of the Superior Court or Notary Public.

I swear or affirm that the information in this Voluntary Petition for Order of Paternity is true and correct to the best of my knowledge and belief.

_____ _____

Date Mother's Signature

State of Arizona)

) §

County of _____)

Subscribed and sworn to or affirmed before on:

_____

My Commission Expires:

_____

_____

Clerk of the Superior Court or Notary Public

Case No. _____

I swear or affirm that the information in this voluntary petition for Order of Paternity is true and correct to the best of my knowledge and belief.

_____ _____

Date Father's Signature

State of Arizona)

) §

County of _____)

Subscribed and sworn to or affirmed before on:

_____

_____

Clerk of the Superior Court or Notary Public

My Commission Expires:

_____

Copy mailed on:_____

[ ] Petitioner

[ ] Respondent

Acknowledgment of Paternity (Married Mother)

(1) Person Filing: _____

Mailing Address: _____

City, State, Zip Code: _____

Daytime Phone: _____

Evening Phone: _____

Representing: [ ] Self [ ] Petitioner [ ] Respondent

State Bar Number (if applicable) _____

ARIZONA SUPERIOR COURT, COUNTY OF PIMA

(2) _____
Person Filing

_____
Other Parent

(3) Case No. _____

ATLAS No. _____

VOLUNTARY PETITION FOR ORDER OF PATERNITY
(With Affidavit of Legally Presumed Father)
A.R.S. § 25-812

The Clerk is requested to issue an order establishing paternity for the following child(ren):

(4) Full Name on Birth Certificate	Date of Birth	Place of Birth (City, County, State, and Country)
_____	_____	_____
_____	_____	_____
_____	_____	_____

The natural mother of the above named child(ren) was married at the time the child(ren) was born, at a time throughout the 10 months immediately preceding such birth or the child(ren) was born during the 10 months after the marriage was legally terminated.
Attached is the legally presumed father's acknowledgement stating he is not the natural father of the minor child(ren).

(5) This petition is based on; (Check one box only)

[ ] **Affidavit of Acknowledgement**: By signing this, we agree and acknowledge that _____ is the natural father of the child(ren) named above.

Case No. _____

[ ] **Genetic Testing and Laboratory Affidavit**: Attached is an affidavit from a certified laboratory indicating that _____ has not been excluded as the natural father of the child(ren) and we agree to be bound by the results of this genetic test.

Both parties must sign this form or an attached notarized affidavit to change a child(ren)'s name

(6) The parents request the Office of Vital Records amend the birth certificate(s) to change the child(ren)'s name(s) from: to:

_____ _____

_____ _____

_____ _____

(7) The following information is required:

Mother's Full Name

_____

Date of Birth Mother's Maiden Name

_____ _____

Mother's Address

_____

_____

Father's Full Name

_____

Date of Birth Place of Birth (City, County, State, and Country)

_____ _____

Father's Address

_____

_____

Case No. _____

IMPORTANT NOTICE READ
THIS BEFORE YOU SIGN

Arizona state law requires that before voluntarily acknowledging paternity, you be given notice of the alternatives to, the legal consequences of and the rights and responsibilities that result. Here are some of the things you should know.

→ No one is required to voluntarily acknowledge paternity

→ You have the right to seek legal advice before signing this document

→ If you are unsure who the father is, an alternative is to have genetic testing done.

After you have agreed to voluntarily acknowledge paternity, the Clerk of the Court or authorized court personnel will issue an order legally establishing the father. This Order is the same as a judgment of the Superior Court. After the Order is issued, both parents will have all the rights and responsibilities of parents as required under Arizona Law. This Order does not decide issues about child support, parenting time or legal decision-making. However, the Order includes a statement of Arizona Law that the parent with whom the child has resided for the greater part of the last 6 months shall have legal decision-making, unless otherwise ordered by the Court.

Arizona Law allows either parent to rescind the acknowledgment of paternity if certain requirements are met. You may have up to 60 days to do this. See § 25-812(H) of the Arizona Revised Statutes.

Do not sign this form until you are before the Clerk of the Superior Court or Notary Public.

I swear or affirm that the information in this Voluntary Petition for Order of Paternity is true and correct to the best of my knowledge and belief.

_____ _____

Date Mother's Signature

State of Arizona)
) §
County of _____)

Subscribed and sworn to or affirmed before on:

_____

_____

Clerk of the Superior Court or Notary Public

My Commission Expires:

_____

Case No. _____

I swear or affirm that the information in this voluntary petition for Order of Paternity is true and correct to the best of my knowledge and belief.

_____ _____

Date Father's Signature

State of Arizona)

) §

County of _____)

Subscribed and sworn to or affirmed before on:

_____

_____

Clerk of the Superior Court or Notary Public

My Commission Expires:

_____

Copy mailed on:_____

[ ] Petitioner

[ ] Respondent

AFFIDAVIT OF LEGALLY PRESUMED FATHER

A.R.S. § 25-814 (A) (1), (B)

(8) I, _____, being duly sworn, state:

I was married to the mother (9) _____
when the child(ren) listed below was born, at a time throughout the 10 months prior to the child(ren)'s birth or the child(ren) was born during the 10 months after our marriage was legally terminated.

(10) Full Name on Birth Certificate	Date of Birth	Place of Birth (City, County, State, Country)
_____	_____	_____
_____	_____	_____
_____	_____	_____

I am not the natural father. I consent to the acknowledgment of paternity filed with the Voluntary Petition for Order of Paternity.

Do not sign this form until you are before the Clerk of the Superior Court or Notary Public.

I swear or affirm that the information in this Affidavit of Legally Presumed Father is true and correct to the best of my knowledge and belief.

_____ _____

Date (Legally Presumed Father's Signature)

State of Arizona)

) §

County of _____)

My Commission Expires:

_____

Subscribed and sworn to or affirmed before on:

_____

_____

Clerk of the Superior Court or Notary Public

Attachment D: Paternity Script

Source: A.R.S. §§ 25-801, 25-802, 25-803, 25-804, 25-805, 25-806, 25-807, 25-809

BURDEN OF PROOF: Clear and Convincing

DETERMINE JURISDICTION:

1. Ensure consistent with Uniform Child Custody Jurisdiction and Enforcement Act
2. Service by publication as permitted by Rules. (Rules 41(m) Ariz. R. Fam. Law Pro.)

RECEIVE EVIDENCE:

1. Swear in the parents.
2. General/biographical information
    a. Dates of birth mother, father, and child(ren)
    b. Address(es) of mother and father
    c. The birthplace of the child(ren)
3. Factual basis for paternity
    a. During probable period of conception, mother engaged in sexual intercourse with alleged father, resulting in conception and birth of child;

    OR

    b. Father's name appears on birth certificate;

    OR

    DNA testing indicate that the likelihood of the alleged father's paternity is 95% or greater.

FINDINGS AND ORDER

"THE COURT FINDS by clear and convincing evidence that the respondent, _____, is the natural father of _____, born _____.

IT IS ORDERED that _____ is adjudicated to be the father of the minor child(ren) _____, born _____.

IT IS FURTHER ORDERED that the Arizona Department of Health Services Office of Vital records amend the birth certificate of the child(ren) to reflect the foregoing establishment of paternity."

Attachment E

IMPORTANT NOTICE FOR PARENTS OF MINOR CHILDREN

You are required to complete a course in Domestic Relations Education on Children's Issues (Parent Education), if you have filed an action for Dissolution of Marriage, Annulment, Legal Separation or certain Paternity/Maternity or post-decree actions if you have natural or adopted minor children with the other party. Unless otherwise ordered by a Judicial Officer, you must attend the course within 45 days of filing a petition, being served with a petition or attending a hearing on your case.

REGISTER IMMEDIATELY TO COMPLY WITH THE 45 DAY COMPLETION REQUIREMENT. CLASSES FILL UP QUICKLY! ONLINE CLASSES ARE NOT ACCEPTED UNLESS ORDERED BY YOUR ASSIGNED JUDGE.
30 DAY COMPLETION REQUIREMENT FOR JUVENILE COURT CASES.

The course is required by A.R.S. §25-351 to help educate parents about the impact of divorce, family reorganization and family litigation on adults and children. It provides useful information to help minimize harmful effects for your children during a difficult time for you and for them. The petitioner in the divorce action must complete the course in order to finalize the case.

INFORMATION ABOUT PAYMENT FOR THE COURSE:

Cost: The course fee is $45 (as of April 1, 2017) per person. If you are filing a Petition for Dissolution of Marriage, Annulment, Legal Separation of Marriage, or for Paternity/Maternity the course fee is included in the initial filing fee. If you are filing a Response to a Petition for Dissolution of Marriage, Annulment, Legal Separation of Marriage, or for Paternity/Maternity the course fee is included in the initial Response fee. If you are filing a Post-Decree action and have never paid the course fee, you will be required to do so. If you have requested that your filing fees be deferred or waived, you may request that the course fee also be deferred or waived. You may pay in any of the following ways:

Pay in Person: The fee may be paid at the Clerk of the Court, 110 W. Congress, Tucson, AZ. You may pay by cash, check, money order, cashier's check, Visa, MasterCard or debit card. You will receive a receipt number at that time. The Clerk's office is open between 8:00 a.m. to 5:00 p.m., Monday through Friday, except on legal holidays.

Pay by Mail: The fee may be mailed to the Clerk of the Court, by check, money order or cashier's check. You must include your Court case number and indicate that the payment is for the parent education course. Enclose a self-addressed, stamped envelope in order to have the receipt mailed to you. Do not mail cash.

Pay by telephone: Call 724-3210 between 8:00 a.m. and 4:00 p.m. Monday through Friday (except on legal holidays) to provide your Visa card or MasterCard number. You will need to provide your court case number and request your receipt be mailed to you.

Registration: You may register for the course on the internet at www.sc.pima.gov/fccc/parented or call the Conciliation Court parent education line at 520-724-4949 during regular business hours (except legal holidays). **You must have your Court case number and your parent education fee receipt number in order to register.**

Special Needs: If you need special accommodations such as auxiliary aids or materials in alternative formats for your attendance due to language needs other than Spanish or due to a disability, call the Conciliation Court Parent Education line at 520-724-4949.

Changing a Class: To change a class after registering, you must call the Conciliation Court at 520-724-4949 and re-register. You cannot change classes through the internet registration. There is no charge to change the class.

ABOUT THE CLASS

- Bring a pen, a photo ID, your Court Case Number, and your Clerk of the Court fee payment receipt to your scheduled class. You will not receive your certificate of completion without showing your photo ID and the Clerk of the Court fee payment receipt.
- Arrive for the class prior to the start time. Late arrivals will not be admitted and will be required to register for a different class. The class lasts approximately 3½ hours. You must attend the entire class to receive a completion certificate. *Bring a sweater or jacket as the classroom may be cold.*
- Parties involved in the same case must attend separate classes. No children are allowed in the class.

CC0248 03/17

AVISO IMPORTANTE PARA PADRES DE HIJOS MENORES

Si ha registrado una demanda de divorcio, anulación de matrimonio, separación legal o ciertos casos de paternidad o maternidad o decretos posteriores a fallos jurídicos, y si tiene hijos menores, biológicos o adoptados en común con la otra parte, deberá completar el curso educativo sobre temas de menores (curso educativo para padres). A menos que el juez emita una orden distinta, tendrá que completar el curso dentro 45 días de haber registrado la petición o de haber recibido notificación de alguna petición o de alguna audiencia relacionada a su caso.

REGÍSTRESE DE INMEDIATO PARA CUMPLIR CON EL REQUISITO DE COMPLETAR EL CURSO DENTRO DE 45 DÍAS. ¡LAS CLASES SE LLENAN PRONTO! NO SE ACEPTARÁ EL TOMAR LAS CLASES EN LINEA A NO SER QUE EL JUEZ ASIGNADO A SU CASO ASÍ LO ORDENE.

PARA LOS CASOS DEL TRIBUNAL DE MENORES SE REQUIERE COMPLETAR EL CURSO DENTRO DE TREINTA DIAS.

El curso educativo es obligatorio conforme a los estatutos A.R.S. §25-351 de las leyes de Arizona para ayudar a los padres con información acerca de los efectos que tiene el divorcio, la reorganización familiar o el litigio familiar en los menores.

INFORMACIÓN DE OPCIONES DE PAGO PARA EL CURSO:

Costo: La tarifa del curso educativo es $45.00 (a partir de 1 abril, 2017) por persona. Si registró una demanda de divorcio, anulación de matrimonio, separación legal o de paternidad/maternidad el costo del curso ya está incluido en la cuota inicial al registrar su petición. Si registró una contestación a la demanda de divorcio, anulación de matrimonio, separación legal o de paternidad/maternidad el costo del curso ya está incluido en la cuota inicial al registrar su contestación. Tendrá que pagar si registra una acción posterior al decreto y si nunca pagó por el curso educativo. Si solicitó un aplazamiento o exención de costos de registración, también podrá solicitar un aplazamiento o exención por el costo del curso educativo. Podrá pagar de cualquiera de las siguientes opciones:

Pagar en persona: Podrá pagar la cuota en la secretaría del tribunal, 110 W. Congress, Tucson, AZ. Podrá pagar en efectivo, por cheque, giro postal, cheque de caja, tarjeta de crédito Visa o Mastercard, o tarjeta de débito. Al pagar le darán el número de recibo. Las horas hábiles del tribunal son de 8:00 a.m. a 5:00 p.m., de lunes a viernes, salvo días feriados.

Pagar por correo: Podrá enviar su pago por correo a la secretaría del tribunal por cheque, giro postal o cheque de caja. Deberá incluir su número de caso e indicar que el pago es para el curso educativo sobre temas de menores. Incluya un sobre con estampilla y su dirección para que le envíen su recibo por correo. No envíe dinero.

Pagar por teléfono: Llame al 724-3210 entre las 8:00 a.m. y las 4:00 p.m. de lunes a viernes (excepto los días feriados) para pagar con su tarjeta de crédito Visa o Mastercard. Deberá proporcionar el número de su caso al tribunal superior y pedir que le envíen su recibo por correo.

Inscripción: Podrá inscribirse para el curso por internet en www.sc.pima.gov/fccc/parented o llamando a la línea telefónica educativa para padres de la corte de conciliación al (520) 724-4949 durante las horas hábiles (salvo días feriados). Para poder registrarse necesitará el número de su caso del tribunal y el número de su recibo por el pago del curso educativo sobre temas de menores.

Necesidades especiales: Si para asistir necesita alguna acomodación especial, por ejemplo equipo auxiliar o materiales en formatos especiales a causa de un idioma diferente al español, o por cuestión de discapacidad, llame a la línea telefónica educativa para padres de la corte de conciliación al (520) 724-4949.

Cambiar de clase: Si después de inscribirse necesita cambiar la clase, deberá llamar a la corte de conciliación al 520-724-4949 e inscribirse de nuevo. No podrá cambiar de clase a través del internet. No hay costo alguno por cambiar de clase.

INFORMACIÓN DE LA CLASE

- Debe traer una pluma, una cédula de identificación fotográfica, su número de caso del tribunal y su recibo de la secretaria del tribunal por el pago de la clase programada. No podrá recibir su certificado de cumplimiento si no presenta su cédula de identificación fotográfica y su recibo de pago de la secretaria del tribunal.
- Debe llegar a la clase poco antes de la hora de empezar. Si llega tarde no se le permitirá tomar la clase y tendrá que inscribirse para otra clase. La clase dura aproximadamente 3 ½ horas. Para poder obtener el certificado de cumplimiento tendrá que asistir a toda la clase. *Traiga consigo un suéter o saco ya que los salones de clases pueden estar fríos.*
- Las partes involucradas en el mismo caso deberán tomar clases por separado. No se permiten niños en la clase.

Attachment F: Order Vacating Parenting Plan Mediation

ARIZONA SUPERIOR COURT, PIMA COUNTY

IN THE MATTER OF:	CASE NO. JD DATE: **ORDER VACATING PARENTING PLAN MEDIATION** **HON.**

Neither parent having completed the required Domestic Relations Education class,

IT IS ORDERED vacating the Parenting Plan Mediation set on _____

The parents are directed to call Conciliation Court at 520-724-5590 to register for the Domestic Relations Education Class.

When the parent with whom the child(ren) has been placed has completed the required Domestic Relations Education Class, the parties may request a mediation session be reset by completing a self-referral mediation form or by making a request at the next court hearing. Please provide certificates of completion of the Domestic Relations Education Class when requesting a mediation session.

DATED this _____day of _____, 20____.

_____
HON.

cc:
Honorable
Juvenile Court Mediation Program
D.C.S. Caseworker:
Dependency Unit/Data Personnel
Assistant Attorney General
Attorney for Mother
Attorney for Father
Attorney for Minor

Attachment G: Parenting Plan Mediation Script

Mediation Scheduling

☐ IT IS ORDERED the matter is set on _____ at _____ a.m./p.m. for 120 minutes *(consider longer if complex, interpreter needed, or incarcerated parent)* before MEDIATOR _____ for a Parenting Plan Mediation. For post-dependency adjudication Parenting Plan Mediations, set **no earlier than sixty days** from date of hearing if either/both parents need to complete the Domestic Relations Education Class. Reminder: Counsel ordered to provide services to assist the parents with resolution of the family law matter **do not** attend mediation unless both agree to do so.

☐ IT IS ORDERED the Department and Minor's counsel or Best Interest Attorney will submit position statements to the Mediation Program **no later than five (5) days before the Parenting Plan Mediation**. These statements are not to be filed with the Clerk of the Court. The law clerk/bailiff shall provide the position statement to appropriate counsel.

Domestic Relations Education Class

☐ The Court takes notice that both parents have completed the Domestic Relations Education Class.

☐ The Court takes notice that parent _____ has completed the Domestic Relations Education Class and parent _____ has not completed the course. IT IS ORDERED that parent _____ complete the Domestic Relations Education Class within 30 days of today's hearing.

☐ Neither parent having completed the Domestic Relations Education Class, IT IS ORDERED that both parents must complete the Domestic Relations Education Class within 30 days of today's hearing.

☐ The Court ORDERS the parent(s) to call (520)724-5590 to schedule the Domestic Relations Education Class. The Court reminds the parents they will need to have the receipt number for payment of the class fee or or the receipt number accompanying the Order deferring/waiving the DREC class fee in order to register. If the judge grants the fee waiver or deferral at a hearing and it is only referenced in a Minute Entry Order, the parent will need to take that Minute Entry Order to the Clerk of the Court's Office in Superior Court at 110 W. Congress Avenue, Tucson, AZ 85701 and have a receipt generated.

☐ *For post-dependency adjudication Parenting Plan Mediations only:* IT IS FURTHER ORDERED a 15 minute Non-Appearance Status Hearing is set *(approximately five days after DREC completion deadline)* on _____ at_____ a.m./p.m before HON. _____, Division _____. At the Non-Appearance Status Hearing the judge will review parents' compliance with the Domestic Relations Education Class. If neither parent complies with the required Domestic Relations Education Class, the Parenting Plan Mediation will be vacated. If the parent with whom the child has been placed completes the Domestic Relations Education Class, the Parenting Plan Mediation will be affirmed.

Ensure MEO copied to Juvenile Court Mediation Program

Attachment H: Position Statement for Parenting Plan Mediation

Family Name: _____ Case Number: JD _____
Date of Session: _____ Mediator: _____
Position from ☐ DCS; ☐ Child/ren's Counsel; ☐ Other _____

Domestic Violence Concerns? ☐ Yes ☐ No ☐ Please specify other safety issues for mediation participation: _____

I. <u>Legal Decision-Making</u>:

A. MAJOR decisions in the areas of **<u>non-emergency medical/health care</u>; <u>education</u>**; **<u>religious upbringing</u>**; and **<u>personal care</u>.** (Please note – each area can be a different choice – see section (B), below.)

☐ Joint
☐ Sole Mother ☐ Sole Father ☐ If Sole to one parent, Ok to Confer with the other parent?

OR

B. ☐ There can be a difference in some areas for LDM. If so, please <u>clearly</u> indicate:

1) In which area(s); and
2) What those differences can be.

_____
_____

C. Additional information you want parties to know about Legal Decision-Making?

_____
_____

II. <u>Parenting Time:</u>

☐ Shared ☐ Primary with Mother ☐ Primary with Father ☐ No Position
☐ Supervision needed for Mother ☐ Supervision needed for Father
Who may (or may NOT) supervise? _____
_____
Additional information you want parties to know about Parenting Time?_____
_____
_____
Any specific safety issues for either parent that should be addressed in the Parenting Plan?
☐ Drug testing Mother ☐ Drug testing Father
☐ Other (please specify the issue and for whom) _____
_____
_____

III. <u>Confidential Information for Mediator only (NOT to be shared with anyone else)</u>:

_____
_____
_____

Attachment I

ARIZONA SUPERIOR COURT, PIMA COUNTY

CASE NO. SP/D

XXXXXXXXXXXX
Petitioner

FINAL ORDER RE: MEMORANDUM OF UNDERSTANDING ESTABLISHING PATERNITY and PARENTING PLAN AGREEMENT

and

XXXXXXXXXXXX
Respondent

ASSIGNED TO: FLAW JUDGE

The Court has received and reviewed the Memorandum of Understanding Establishing Parenting Plan submitted by the court mediator and signed by the parties on: XXX.

The Court has received and reviewed the Stipulation for Order of Paternity submitted by the court mediator and signed by the parties on: XXX.

☐ The Court finds that Arizona is the state with jurisdiction to hear and determine matters regarding legal decision-making and/or parenting time, in that:

1. Arizona is the home state of the child(ren) on the date of the commencement of the proceeding, or was the home state of the child(ren) within six months before the commencement of the proceeding and the child(ren) is(are) absent from this state but a parent or person acting as a parent continues to live in this state.
2. No other state has jurisdiction and/or has declined jurisdiction of legal decision-making and/or parenting time matters.
3. The Indian Child Welfare Act ☐ is applicable ☐ is not applicable.
4. The Parental Kidnapping Prevention Act does not apply.
5. No applicable international law concerning the abduction or removal of children applies.

THE COURT FINDS _____ (father's) paternity to the child(ren) has been established through an order dated _____ . **OR**

THE COURT FINDS, pursuant to A.R.S. Section 25-814 A(4), that no other man is presumed to be the child(ren)'s father through marriage, genetic testing, birth certificate, or acknowledgement, and that the parties stipulate to the paternity of _____to the child(ren) though the notarized Stipulation for Order of Paternity signed by the parties on _____ and filed with the court on _____.

THE COURT FINDS by clear and convincing evidence that _____ is the natural father of the minor child(ren) _____, born / / ; _____, born / / ; _____, born / / ; and _____, born / / .

IT IS ORDERED that _____ is adjudicated to be the father of the minor child(ren) _____, born / / ; _____, born / / ; _____, born / / ; and _____, born / / .

IT IS FURTHER ORDERED that Arizona Department of Health Services Office of Vital Records amend the birth certificate of the child(ren) to reflect the forgoing establishment of paternity.

☐ **IT IS ORDERED** that the parenting plan is approved and incorporated by this reference. The parties shall comply with the terms of the Memorandum of Understanding Establishing Parenting Plan.

☐ **IT IS ORDERED** that the Memorandum of Understanding Establishing Parenting Plan is not approved by the Court.

☐ **IT IS ORDERED** that the determination regarding approval of the parenting plan is deferred to the time of the next court hearing in the consolidated matter.

☐ **IT IS ORDERED** this is a final judgment and the court expressly determines there is no just reason for delay despite the fact that fewer than all claims are resolved pursuant to 17B A.R.S. Rules Fam. Law Proc., Rule 78(b). The following issue(s) remain unresolved: _____. **IT IS ORDERED** a ☐ status **OR** ☐ evidentiary hearing is set on _____, 2022 at _____a.m./p.m. in front of the Hon._____ to address unresolved issue of: child support and/or _____.

OR

☐ **IT IS ORDERED** that no further matters remain pending and this judgment is entered under 17B A.R.S. Rules Fam. Law Proc., Rule 78(c).

IT IS FURTHER ORDERED: _____

_____

_____

_____

_____

Dated:_____ _____

Judicial Officer

Copy to:
Honorable
Petitioner
Respondent
Atty for Petitioner
Atty for Respondent

Attachment J: Order Setting Child Support Status Hearing

This Court has issued parenting time orders, and therefore, pursuant to A.R.S. Section 25-403.09, sets the matter for a status hearing to address resolution of child support.

If IV-D or if child support is only remaining issue in SP case: The Court schedules a status hearing to address scheduling a child support hearing before the Honorable _____, in IV-D division on _____, 202__ at ____ a.m./p.m for _____ minutes.

Both parties **SHALL APPEAR** for the scheduled hearing by calling the teams conference number _____ , conference code _____ at the time of the hearing. **If a party fails to appear, the Court can proceed with the child support hearing in their absence.**

At the status hearing, the Court will schedule the final child support hearing, can provide additional information about the child support issues to be addressed at the hearing, and will address questions you have. You may represent yourself at the hearing, you may retain private counsel, or you may request the services of the Arizona Department of Economic Security, Division of Child Support Services (602)252-4045.

TO CALCULATE CHILD SUPPORT, THE COURT WILL NEED THE FOLLOWING INFORMATION, at a minimum: each parent's current fully completed child support financial affidavit (available at www.sc.pima.gov/law-library/forms/ go to family law, then for all case matters, "Financial Affidavit – Child Support Only"), their last four pay stubs and proof of income for any other source year-to-date, proof of all medical, dental, and vision insurance premiums paid by the party for any child subject to the child support order, and proof of any current daycare expenses to the other party. Please begin gathering these documents. You may represent yourself at the hearing, you may retain private counsel, or you may request the services of the Arizona Department of Economic Security, Division of Child Support Services (602)252-4045.

Ensure current addresses for both parents are obtained.

cc both parents and assigned family law division and/or IV-D division.

cc: Clerk's Office, Child Support Division

Attachment K: Averhealth Drug Test Order Information.

Procedure when juvenile court judge issues **ongoing** drug testing in a consolidated family law case:

1. Juvenile court judge drafts the Averhealth drug testing order in Edocs. Obtain from family law (hereinafter "FL") division.

2. Juvenile court JAA needs to communicate with the FL JAA to ensure appropriate information is entered into Averhealth system (**FL JAAs have access to Averhealth system, juvenile court JAAs do not have access**).

3. Juvenile court JAA will process drug testing order through Edocs and send to clerk.

4. Juvenile court judge and/or juvenile court JAA needs to obtain email addresses for FL parties and/or FL counsel to include on bottom of page two of drug testing order so that Averhealth can directly send that information to the party and/or counsel.

5. Each FL Division has an annual limited expedited fund budget. Because budget is allocated by family law division, **any expenditure by a juvenile judge requires advance collaboration with and approval by the family law division. In other words, don't check the expedited fund box for payment of drug testing expenses unless approved by the assigned FL judge.**

6. Prior to unconsolidation, consider whether necessary to have juvenile court JAA confer with FL JAA to schedule a review hearing in assigned FL division to review status of drug testing results. Ensure parties receive notice of the review hearing (ideal to do in court when parties present, if possible.)

CLE by the SEA 2023

Family Law Track
Day 2

July 11, 2023
8:15am – 12:30pm

THE SHELY FIRM, PC

Lynda C. Shely
Lynda@Shelylaw.com

Recent Ethics Developments: ABA, Arizona, and Elsewhere!

Spring, 2023

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 495 Lawyers working remotely (2020)**

Lawyers may remotely practice the law of the jurisdictions in which they are licensed while physically present in a jurisdiction in which they are not admitted if the local jurisdiction has not determined that the conduct is the unlicensed or unauthorized practice of law and if they do not hold themselves out as being licensed to practice in the local jurisdiction, do not advertise or otherwise hold out as having an office in the local jurisdiction, and do not provide or offer to provide legal services in the local jurisdiction. This practice may include the law of their licensing jurisdiction or other law as permitted by ABA Model Rule 5.5(c) or (d), including, for instance, temporary practice involving other states' or federal laws. Having local contact information on websites, letterhead, business cards, advertising, or the like would improperly establish a local office or local presence under the ABA Model Rules.

- **ABA Op 498 (2021) Virtual practice**

The ABA Model Rules of Professional Conduct permit virtual practice, which is technologically enabled law practice beyond the traditional brick-and-mortar law firm.1 When practicing virtually, lawyers must particularly consider ethical duties regarding competence, diligence, and communication, especially when using technology. In compliance with the duty of confidentiality, lawyers must make reasonable efforts to prevent inadvertent or

[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.*

unauthorized disclosures of information relating to the representation and take reasonable precautions when transmitting such information. Additionally, the duty of supervision requires that lawyers make reasonable efforts to ensure compliance by subordinate lawyers and nonlawyer assistants with the Rules of Professional Conduct, specifically regarding virtual practice policies.

- **ABA Op 499 Non-Arizona Lawyers Investing In Arizona ABS Entities (2021)**

A lawyer may passively invest in a law firm that includes nonlawyer owners ("Alternative Business Structures" or "ABS") operating in a jurisdiction that permits ABS entities, even if the lawyer is admitted to practice law in a jurisdiction that does not authorize nonlawyer ownership of law firms.1 To avoid transgressing Model Rule 5.4 or other Model Rules and to avoid imputation of conflicts under Model Rule 1.10, a passively investing lawyer must not practice law through the ABS or be held out as a lawyer associated with the ABS and cannot have access to information protected by Model Rule 1.6 without the ABS client's informed consent or compliance with an applicable exception to Rule 1.6 adopted by the ABS jurisdiction. The fact that a conflict might arise in the future between the investing lawyer's practice and the ABS's work for its clients does not mean that the lawyer cannot make a passive investment in the ABS. If, however, at the time of the investment the lawyer's investment would create a personal interest conflict under Model Rule 1.7(a)(2), the lawyer must refrain from the investment or appropriately address the conflict under Model Rule 1.7(b).

- **ABA Op. 500 Language Access for Clients (2021)**

Communication between a lawyer and a client is necessary for the client to participate effectively in the representation and is a fundamental component of nearly every client-lawyer relationship.1 When a client's ability to receive information from or convey information to a lawyer is impeded because the lawyer and the client do not share a common language, or owing to a client's non-cognitive physical condition, such as a hearing, speech, or vision disability, the duties of communication under Model Rule 1.4 and competence under Model Rule 1.1 are undiminished. In that situation, a lawyer may be obligated to take measures appropriate to the client's circumstances to ensure that those duties are capably discharged. When reasonably necessary, a lawyer should arrange for communications to take place through an impartial interpreter or translator2 capable of comprehending and accurately explaining the legal concepts involved, and who will assent to and abide by the lawyer's duty of confidentiality. The lawyer also should use other assistive or language-translation technologies, when necessary.

- **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 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. 503 "Reply All" Communications (2022)**

In the absence of special circumstances, lawyers who copy their clients on an electronic communication sent to counsel representing another person in the matter impliedly consent to receiving counsel's "reply all" to the communication. Thus, unless that result is intended, lawyers should not copy their clients on electronic communications to such counsel; instead, lawyers should separately forward these communications to their clients. Alternatively, lawyers may communicate in advance to receiving counsel that they do not consent to receiving counsel replying all, which would override the presumption of implied consent.

- **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.

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.

- **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-20-0001 (2020): Duties upon withdrawal**

  "Lawyer-client relationships sometimes end earlier than the lawyer and client anticipated at the start of the representation. A lawyer's withdrawal from representation is not always agreed upon by the client and may also be under touchy circumstances, such as dishonesty of the client or non-payment of fees owed to the lawyer. Further, a client may fire a lawyer at any time, for good or bad reasons. A lawyer faced with such situations must uphold the lawyer's ethical responsibilities to the client despite that the representation is at, near, or has reached an end. Client confidentiality must be protected unless the ethical rules specifically allow disclosure, and any disclosures must be made as narrowly as possible. If, in a court setting, the tribunal does not allow the withdrawal, the lawyer can seek relief from a higher court, but must protect the client's interests and competently represent the client until and unless an order for withdrawal is granted. A withdrawing lawyer must advise the client and new counsel of pending court dates, status of the case, and anything else necessary and appropriate for the smooth transfer of the representation. Any fees charged to the client for withdrawal-related work must be reasonable. Of course, the client is entitled to the client file consistent with Ethics Opinion No. EO-19-0009, regardless of the circumstances for the withdrawal."

- **EO-20-0003 (2021): Fee financing**

  "With the recent elimination of fee-sharing prohibition, a fee-financing arrangement in which a lender will retain a portion of the lawyer's fees is permissible. To pass along the cost of the fees retained by the lender to the client, the lawyer must disclose the charge's nature and details. The lawyer must also reveal alternative payment options and the merits and drawbacks of those alternatives. At all times, the lawyer's fee must remain reasonable. Provided the lawyer obtains the client's informed consent, the lawyer may disclose information necessary to facilitate a lender's fee-financing arrangement. The lawyer must inform the client of the full range of consequences presented by the disclosure of client-related information to a third party, including the possible waiver of attorney-client privilege if applicable. The lawyer has a continuing obligation to ensure that information disclosed to a lender is not misused or disclosed to unauthorized individuals. Fee-financing arrangements raise several potential conflicts of interest. The lawyer must acquire the client's informed consent, confirmed in writing, to waive these conflicts if a significant risk of them occurring is present. In the consumer bankruptcy context, the lawyer's duty of candor requires disclosure of all relevant details concerning a fee-financing arrangement to the bankruptcy court."

- **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.

2023 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.

2021 Arizona Rule Change Permits Nonlawyer Owners of *Licensed* Arizona Law Firms

In January, 2021 the Arizona Supreme Court became one of the first U.S. jurisdictions to permit nonlawyers to have an ownership interest in law firms – with a couple of caveats:

- Arizona "alternative business structure" (ABS) law firms must apply and be approved by the Arizona Supreme Court
- Any changes in the ownership must be approved by the Arizona Supreme Court
- Arizona ABS law firms do *not* authorize nonlawyers to practice law – only Arizona lawyers may practice law.
- Lawyers admitted in other states (not Arizona) probably may have "passive" investment interests in Arizona ABS law firms (per ABA Op. 499) but they probably cannot practice law through an Arizona ABS (because their home licensing jurisdiction will not permit it).
- In addition to complying with the Arizona Rules of Professional Conduct, Arizona ABS law firms also must comply with an additional Arizona Supreme Court ABS Code of Conduct. ACJA 7-209K.

There are currently 49 licensed ABS law firms in Arizona.

2021 (and 2023) Arizona Legal Paraprofessional Program

To address the still unmet need for representation of individuals in certain court matters and administrative proceedings the Arizona Supreme Court approved licensing a new category of legal service providers – legal paraprofessionals ("LPs"). LPs will be licensed to provide legal services in certain family law, criminal law (not involving possible incarceration), civil justice court matters, administrative proceedings, and juvenile matters.

The licensing criteria and code of conduct for LPs is located in the Arizona Code of Judicial Administration ("ACJA") 7-210, available on the Arizona Supreme Court website and in the Arizona Rules of Court publication.

Applicants must *first* pass the LP exams (one exam on core skills and one for each of the practice areas) created by the Supreme Court. After successful completion of the exams, candidates may file an application with the Supreme Court's Board of Nonlawyer Legal Service Providers.

Eligibility requirements include *either* 7 years of law-related work experience or a variety of educational requirements, including law school, paralegal courses, undergraduate degree in a legal field, etc. along with character and fitness standards.

Certified LPs have "endorsements" for specific areas of practice, including family law, civil justice and municipal court practice, criminal law (city and justice court matters not involving incarceration), juvenile law, and/or administrative law. Juvenile law and an adoption certification endorsement were just added in 2023. Family law LPs cannot prepare QDROs, advise on the division or conveyance of business entities or commercial property, or handle appeals.

Certified LPs may be employed by lawyers or work independently. This means that law firms may employ LPs to represent clients and the LPs do not need to be supervised by an attorney.

LPs may appear in court on behalf of clients – but only in the endorsement practice areas noted above. LPs must maintain trust accounts and pay into a Client Protection Fund and must comply with the Rules of Professional Conduct.

LPs will be affiliate members of the State Bar of Arizona and subject to discipline investigation for violations of their code of conduct, including the Rules of Professional Conduct. Licensed LPs are listed on the State Bar of Arizona website database. Communications between LPs and their clients are considered "privileged" according to Arizona Rule of Evidence 513.

There are more than 40 currently certified LPs.

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.

- **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).

- **Client Due Diligence - Possible Rule changes.**

For many years the American Bar Association has deliberated over modifying the Model Rules of Professional Conduct to clarify a lawyer's obligation to not facilitate a client in illegal conduct such as money laundering. Beyond not intentionally assisting a client's criminal or fraudulent conduct, the Rules also require that before taking on a new client, the lawyer assess the risk of the client possibly retaining the lawyer's services to (unwittingly) assist with money laundering. The following is an excerpt from January 23, 2023 Memorandum from the Standing Committees on Ethics and Professional Responsibility ("Ethics") and Professional Regulation, with a discussion draft of possible Model Rule amendments, which explains a bit of the background behind the proposed changes:

> The impetus for the Committees' work on this subject related to concerns about lawyers facilitating money laundering and terrorism financing. As noted in the memo accompanying the Standing Committees' First Discussion Draft, the application of anti-money laundering and counter terrorism financing laws and regulations to lawyers is a complex subject that can generally be divided into three overarching topics:
> • a lawyer's responsibility to know the client -- essentially to conduct client due diligence -- to ensure that the lawyer is not being used to assist a client in a crime or fraud;
> • whether, when, and how a lawyer might be required to disclose to the government information about the beneficial ownership of an entity the lawyer forms on behalf of a client or otherwise represents; and
> • whether, when, and how a lawyer might be required to report to the government "suspicious activity" of a client.
>
> Money laundering occurs when criminals hide the proceeds of unlawful activity (dirty money) using "laundering" transactions so that the money appears to be the "clean" proceeds of legal activity. Money laundering often occurs with the knowing and unknowing assistance of others. Money laundering can be used by criminals to facilitate other illegal and corrupt behavior such as human trafficking and human rights violations. Terrorism financing is just that, providing funds to those involved in terrorism. Money laundering is often used to facilitate financing of terrorism.

Why is all of this noted when the ABA has not yet amended the Rules to require certain client due diligence efforts by lawyers? Because the obligations actually are implicit in the existing Rules and the explicit requirements are *coming and law firms need to be prepared*. Besides the fact that performing a risk-based inquiry into all new clients is a practical risk management step, the U.S. Treasury Department and others are pushing to mandate such due diligence efforts by law firms so that lawyers do not facilitate client illegal activity such as money laundering.

Plan now – implement procedures in firms to require that lawyers inquire into at least the following before accepting a new client:

- The identity of the client (verify it through an independent source)
- Proof of identity, including drivers' licenses or passports for all "beneficial owners" of companies to comply with the FinCEN reporting obligations noted above.
- How familiar is the lawyer with the prospective client – i.e., is this a person the lawyer personally has known for years or a cold call from someone new to the area/state/country?
- Verify the source of any advance fee deposits
- The nature of the legal services requested (such as an unusual business transaction or large purchase or transaction involving parties outside of the state)
- The jurisdictions involved (for example, is the client or another party in the matter in a jurisdiction that is considered a high risk of money laundering or terrorism financing.

For additional resources about preventing money laundering, review the Financial Action Task Force Guidance for a Risk-Based Approach for Legal Professionals (2019), the ABA Voluntary Good Practices Guidance for Lawyers to Detect and Combat Money Laundering and Terrorist Financing and any updated guidance, and A Lawyer's Guide to Detecting and Preventing Money Laundering, a collaborative publication of the International Bar Association, the American Bar Association and the Council of Bars and Law Societies of Europe (2014).

ChatGPT and Other Fun New Things to Worry About

*ChatGPT

In case the term "ChatGPT" is unfamiliar, Google it. This is merely an online app 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 Florida law," or "Prepare an employment contract using Washington state law for an independent contractor." Sounds like practicing law, right? Kind of.

While the media is replete with stories of how ChatGPT(4) passed a bar exam and was able to take and pass a final exam in Constitutional law, this is just the latest *assistance* for lawyers. Really. Think of this as the 2023 version of Westlaw on steroids, or like the national rage about using off-shore researchers/drafters in other countries. No, it's not going to eliminate lawyers and no it is *not* a substitute for lawyers applying substantive law to specific facts, but it *might* be an efficient tool for lawyers to get a first draft of a contract or motion for summary judgment. But just like the duty to supervise paralegals and law clerks to assure that they actually have the correct pin cite for a case, and didn't misquote a treatise, lawyers *must supervise artificial intelligence.* And

yes, your lawyers probably are experimenting with AI, including ChatGPT. Remind them that they do have ethical obligations under Model Rules 1.1, 5.3 and 5.5 to review and check the "work" completed by AI, and also to assure they are not assisting the unauthorized practice of law.

Also, warn your lawyers that they *should NOT be entering client identifying information* (including client names) into ChatGPT or any other AI online source (Google's version is Bard) that then commingles that information in its vast database…which other people also can find. 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) is now available *to your opposing counsel.*

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.

Also, consider whether your lawyers' search queries in ChatGPT are available to opposing counsel. In the example above, wouldn't it be useful for an opposing counsel to know that a lawyer at your firm just searched in ChatGPT for how to draft a motion for summary judgment in Bucks County? Has your firm just breached ethical duties to the client by signaling to opposing counsel what may be filed? Probably.

One final ethics consideration when preparing documents using open AI sources: how will you bill for that time? Just like a firm cannot bill each client all of the time it took to draft the initial template for a Motion for Sanctions in Maricopa County for discovery violations, the firm cannot spend five minutes on ChatGPT to prepare that motion and then try to bill ten hours of drafting time…unless of course the firm spends 9.95 hours double-checking the citations used in the draft Motion.

*Video Hearings and Depositions

One reminder about video depositions and hearings: all of the Rules of Procedure and Ethics apply. Apparently some lawyers mistakenly believe that it is permissible to *text* answers to their client (or witness) while they are testifying. Or use the "chat" function in Zoom, GotoMeeting, Teams to signal their client on how to answer questions. These lawyers frequently get disciplined for violating multiple Rules of Professional Conduct. Just because the hearing/deposition is not in person does not mean that rules don't apply.

Adopting new technologies is exciting and frequently is surrounded by lots of hype about needing to keep on top of emerging technologies to remain competitive – but lawyers also have a duty to be cautious about adopting such innovations without understanding the risks associated with their use. Just like lawyers during the pandemic had to learn how to manage video hearings competently (*please see Cat lawyer video…),* so too they must use any innovation correctly and carefully.

Lynda C. Shely, of The Shely Firm, PC, Scottsdale, Arizona, provides ethics and regulatory advice to lawyers and law firms. 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 is chair of the ABA Standing Committee on Ethics and Professional Responsibility, an Arizona Delegate in the ABA House of Delegates, and 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 and the State Bar of Arizona Ethics Advisory Group. She is a past president of the Association of Professional Responsibility Lawyers and the Scottsdale Bar Association and has been an adjunct professor at all Arizona law schools, teaching professional responsibility. 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.

ARIZONA SPOUSAL MAINTENANCE GUIDELINES

Table of Contents

SECTION I. GENERAL INFORMATION

A. EXECUTIVE SUMMARY

The legislature amended Arizona's spousal maintenance statute, A.R.S. § 25-319, effective September 24, 2022, and directed the Supreme Court to establish Spousal Maintenance Guidelines. On *[date]*, the Supreme Court approved the Guidelines for determining the amount and duration of spousal maintenance awards in Arizona. The criteria for determining whether a spouse is eligible for spousal maintenance under A.R.S. § 25-319(A) did not substantively change. But under A.R.S. § 25-319(B), courts "may award spousal maintenance pursuant to the guidelines *only for a period of time and in an amount necessary to enable the receiving spouse to become self-sufficient.*" [Emphasis added.]

The Guidelines lead to an amount range from which the court determines the appropriate award. Yet if the court finds the amount resulting from applying the amount range is inappropriate or unjust, the court may deviate based on the factors in Section VI of the Guidelines. The Guidelines also establish duration ranges for the spousal maintenance award, but the statute does not authorize a deviation from the duration ranges.

The Spousal Maintenance Calculator uses data from the United States Bureau of Labor Statistics Consumer Expenditure Survey. The method applied to the data is a per capita method adopted by the United States Department of Agriculture Survey of Expenditures on Children by Families, adjusted for inflation. The Spousal Maintenance Calculator is based on expenditure and income data for persons with similar demographic and geographic characteristics.

The Consumer Expenditure Survey data tables report the number of people in a household (i.e., "consumer unit") in five categories: one person; two people; three people; four people; five or more people. Households containing five or more people are aggregated into one category.

There are examples throughout the Guidelines using fictitious party names to help understand the Guidelines. If there is a discrepancy between the Guidelines' examples and language, the Guidelines' language controls.

These Guidelines differ from Arizona's Child Support Guidelines. The court must apply the Spousal Maintenance Guidelines to award spousal maintenance. If the court is considering spousal maintenance and child support, spousal maintenance must be determined first.

B. PURPOSES

1. To allow the requesting spouse to become self-sufficient.

2. To achieve consistency in awards for persons in similar circumstances.

3. To provide guidance in establishing spousal maintenance awards and to promote settlements.

C. EFFECTIVE DATE

The effective date of the amendments to A.R.S. § 25-319 was September 24, 2022.

1. Original Dissolution or Legal Separation Petition

For original dissolution or legal separation petitions filed **on or after** September 24, 2022, the Guidelines apply unless the parties agree otherwise. *See* Arizona Supreme Court Administrative Order 2022-119.

For original dissolution or legal separation petitions filed **before** September 24, 2022, the Guidelines do not apply unless the parties agree otherwise.

2. Modification Petitions

a. For original dissolution of marriage or legal separation petitions filed **on or after** September 24, 2022.

The court must apply the Guidelines. When deciding a modification petition subject to the Guidelines, a party can establish a substantial and continuing change of circumstances by showing that applying the Guidelines would change an existing order.

b. For original dissolution of marriage or legal separation petitions filed **before** September 24, 2022.

The Guidelines do not apply and cannot form the basis for finding changed circumstances under A.R.S. § 25-327. If a party otherwise establishes changed circumstances, the court may, but need not, consult the Guidelines to determine the amount—but not the duration—of an award.

D. APPLICATION

Eligibility and Entitlement. Under Arizona law, there is a distinction between "eligibility" for spousal maintenance and "entitlement" to spousal maintenance. As explained below, a spouse may be eligible but not entitled to spousal maintenance.

Eligibility means that a party meets at least one of the factors under A.R.S. § 25-319(A). If a court determines that the requesting spouse is not eligible for spousal maintenance, there is no requirement to use the Spousal Maintenance Calculator. If a court determines that a party is eligible for spousal maintenance, the court must proceed with the spousal maintenance calculation under the Guidelines.

Entitlement means that after calculating the spousal maintenance amount under the Guidelines, and if the court determines that application of the Guidelines is just and appropriate, the court must award the party spousal maintenance. A.R.S. § 25-319(B). On the other hand, if the court determines that the amount of spousal maintenance is inappropriate or unjust under the Guidelines, the court may deviate under Section VI and award either an appropriate amount or nothing.

Application of the Guidelines creates an amount range for the spousal maintenance award consistent with each party's ability to be self-sufficient during the duration of the award and to allow the receiving spouse to become self-sufficient during that time.

Using the Spousal Maintenance Calculator. To calculate the spousal maintenance award, use the Spousal Maintenance Calculator found on the Supreme Court's website. *[URL]* To calculate the amount range, input relevant data into the information fields on the worksheet.

Step 1: Determine Family Size

To determine the family size, use the criteria in Section II.

Step 2: Determine the parties' combined Spousal Maintenance Income

Applying Section III of the Guidelines, first calculate each spouse's actual income. If a party's income is attributed, input that amount. The Spousal Maintenance Calculator automatically adds the actual and any attributed income for both spouses to determine the parties' combined Spousal Maintenance Income.

Step 3: Determine the Family's Average Monthly Mortgage Principal

Add the principal portion of the mortgage payment for all residences the family uses. *See* Section IV.

To determine the average monthly amount, the total principal paid for the 12 months before the action is filed is divided by 12. Do not include mortgage interest, taxes paid on the residence, or homeowner's insurance. Unlike the other numbers in the Calculator, this number is a monthly amount.

Step 4: Determine Expenditures

After Steps 1 through 3 are completed, the Spousal Maintenance Calculator automatically generates an amount range that includes expenditures for one adult and one-half of the family's indivisible housing expenditures, excluding the principal on all residential mortgages. The Spousal Maintenance Calculator combines these expenditures and the average monthly mortgage principal into a combined expenditure figure. The receiving spouse's share of the combined expenditures represents the receiving spouse's contribution toward the combined expenditures without a spousal maintenance award. The receiving spouse's share is calculated proportionately to that spouse's share of the combined Spousal Maintenance Income.

Step 5: Calculate the Amount Range

The amount range is the amount remaining after subtracting the receiving spouse's share of expenditures from the combined expenditures. After considering the statutory factors and facts in a particular case, the court can award an amount within the amount range. If the court determines the amount range is unjust, the court can deviate from the amount range, including an award of zero. *See* Section VI.

If the combined annual Spousal Maintenance Income is greater than $22,500 and less than $44,000, the calculator will produce a spousal maintenance range beginning with zero. If the court, in its discretion, elects to award spousal maintenance, the amount must be consistent with the paying spouse's ability to pay. If the combined annual Spousal Maintenance Income is $22,500 or less, the calculator will produce a spousal maintenance award of zero.

If there is a zero award, whether under the Spousal Maintenance Calculator or by deviation, the court need not determine a duration range under Section V. The final order must specify that neither party is entitled to spousal maintenance.

Step 6: Determine the Duration Range

To determine the appropriate duration range, the court must use the criteria in Section V. The court cannot deviate from the duration ranges under Section VI.

Step 7: Determine the Spousal Maintenance Award

The court must award spousal maintenance consistent with the amount and duration ranges that will enable the receiving spouse to become self-sufficient unless the court determines a deviation is appropriate. Unless the court deviates, the court need not make additional findings of fact and conclusions of law if the spousal maintenance award is within the amount range. A party, however, may request findings under Rule 82, Arizona Rules of Family Law Procedure, about the figures used in the Spousal Maintenance Calculator.

SECTION II. DETERMINING FAMILY SIZE

To determine the family size, include the parties and any child for whom at least one of the parties has a legal obligation to support and for whom that party is actually paying support. Unlike child support, if a parent does not actually pay child support and does not live with the child, that child is not included in the family size. A court order for support of the child is unnecessary.

Example 1: Pat and Marty are getting divorced. Pat has a child from another relationship. Pat is not that child's primary residential parent but pays child support. The parties must include the child in determining family size because Pat is legally obligated to support the child.

Example 2: Pat and Marty are getting divorced. Pat has a child from another relationship. Pat is the child's primary residential parent and receives child support. The parties include the child in determining family size because Pat is legally obligated to support the child.

Example 3: Pat and Marty are getting divorced. Pat has a child from another relationship. Pat neither has contact with the child nor pays child support. The parties do not include the child in determining family size.

Example 4: Pat and Marty are getting divorced. They have three adult children, ages 21 (Ben), 23 (Mary), and 25 (Gordon), living at home. Mary has special needs requiring continued support. The parties include Mary in determining family size because there is a legal obligation to support Mary. There is no legal obligation to support Ben or Gordon, so they are not included in the family size.

The Consumer Expenditure Survey data tables report the number of people in a household (i.e., "consumer unit") in five categories: one person, two people, three people, four people, and five or more people. The maximum household size is five because the survey data aggregated families of five or more into one category.

SECTION III. DETERMINING SPOUSAL MAINTENANCE INCOME

A. DETERMINING THE SPOUSES' ACTUAL INCOMES

1. What is included in Actual Income?

a. The terms "Actual Income" and "Spousal Maintenance Income" do not have the same meaning as "Gross Income" or "Adjusted Gross Income" for tax purposes. "Actual Income" and "Spousal Maintenance Income" may differ from Child Support Income.

b. Actual Income includes income from any source before any deductions or withholdings. Actual Income may consist of salaries, wages, commissions, bonuses, dividends, severance pay, military pay, pensions, interest, trust income, annuities, capital gains, social security benefits subject to statutory limitations, workers' compensation benefits, unemployment insurance benefits, disability benefits, military disability benefits to the extent includable under the law, interest paid on equalization payments, recurring gifts, or prizes.

c. Income may include monies received from retirement assets. Once the spouse reaches full retirement age as defined by 42 U.S.C. § 416(l), the court may include an amount for income or distributions from the currently available retirement assets.

Example 1: Chris is 50 years old and has an IRA. The court shall not add income from the IRA until Chris reaches full retirement age as defined by 42 U.S.C. § 416(l).

Example 2: Chris has reached full retirement age and has an IRA but does not take distributions. The court may include an amount as income to Chris.

d. The Guidelines annualize seasonal or fluctuating actual income. The court may average fluctuating income over periods exceeding one year.

e. The court may consider whether non-continuing or non-recurring income is regarded as Actual Income.

f. Actual Income from self-employment, rent, royalties, a business proprietorship, or a jointly owned partnership or a closely held corporation is calculated by taking total income received before any deductions or withholdings minus ordinary and necessary expenses required to produce the Actual Income. Ordinary and necessary expenses include one-half of the self-employment tax actually paid.

g. Expense reimbursements or benefits a spouse receives during employment, self-employment, or business operation may be included as Actual Income if they are significant and reduce personal living expenses. Cash value may be assigned to in-kind or other non-cash personal employment benefits. The court may consider whether including these benefits as income would inflate the spouse's Actual Income resulting in an award based on income they do not actually have. In such cases, attributing income may not be appropriate. *Hetherington v. Hetherington*, 220 Ariz. 16, 23-24, ¶ 29 (App. 2008).

h. Continuing or recurring military entitlements, including but not limited to Basic Allowance Housing (BAH) and Basic Allowance Subsistence (BAS), may be included as Actual Income. Military-provided housing may be an in-kind or other non-cash employment benefit.

i. If a child not common to the parties is included in the family size in Section II, the court may include annualized child support actually received from a third party for that child as part of Actual Income.

Example: Pat and Marty are getting divorced. Pat has a child from the previous marriage. Pat receives child support from the child's other legal parent. In determining Pat's Actual Income, include the child support Pat receives.

2. What is not included in Actual Income?

a. Sums a spouse receives from the other spouse in this case as child support for a common child under a court order.

Example 1: Pat and Marty were divorced, and Pat received a spousal maintenance award of $1,000 a month for five years. Pat also received a child support award of $200 a month for their child. Two years later, Pat petitioned to modify the spousal maintenance award. In applying the Guidelines to the modification petition, do not include Pat's $200 child support as income. The child is included in the family size, but the $200 child support award is not included in Actual Income.

Example 2: Pat files for divorce from Marty. While their divorce is pending, Marty pays Pat $200 a month in temporary child support for their child. At the dissolution trial, do not include Pat's temporary child support of $200 a month as Actual Income because, although the child is included in the family size, the temporary child support award is not included as Actual Income.

b. For the paying spouse, federal disability benefits under 10 U.S.C. § 1413a or 38 U.S.C. chapter 11. *See* A.R.S. § 25-530.

c. Reasonable spousal maintenance the payor spouse pays on existing court orders in another case.

d. Marital property distributed between the spouses, except to the extent that such property generates income for a spouse.

3. When is overtime included in Actual Income?

The expenditure schedules in the Spousal Maintenance Calculator reflect the standard of living for the parties during the marriage. So unlike child support income, a court should include overtime or extraordinary work regimen income regularly earned by the marital community.

B. DETERMINING THE SPOUSES' ATTRIBUTED INCOME

1. Attributed Income is not actually earned or received but is an assigned income based on a court finding that the amount attributed should be used to calculate combined Spousal Maintenance Income.

2. In deciding whether to attribute income, the court considers the following factors:

    a. The receiving party's plan, efforts, and opportunity to achieve self-sufficiency;

    b. Whether attributing income will interfere with the receiving party's ability to achieve self-sufficiency;

    c. The party's assets, residence, employment and earnings history, job skills, educational attainment, literacy, age, health, criminal record, other employment barriers, and record of seeking employment;

    d. The local job market, the availability of employers willing to hire the party, the prevailing earnings level in the local community, and standards for the number of hours considered full-time based on a particular field of employment;

    e. If the receiving party can find suitable employment in the marketplace at a greater income based on the party's current educational level, training and experience, and physical capacity; and

    f. The reasons a party is unemployed or underemployed, whether voluntarily or involuntarily.

        i. If involuntary, whether it is reasonable for that party to find replacement income above actual earnings.

        ii. If voluntary with reasonable cause, whether the party's decision and its benefits outweigh the impact of the reduced income on the party's ability to become self-sufficient or pay spousal maintenance.

        iii. If the party complaining of a voluntary reduction in income acquiesced to the other party's conduct and the reasons behind the acquiescence.

        iv. The timing of the action in question in relation to the entry of a decree or the execution of a written agreement between the parties.

v. If voluntary and without good cause, whether income attribution is appropriate.

3. If the court attributes income to calculate the combined Spousal Maintenance Income, the court must note the amount attributed in the worksheet.

4. As explained in Section III(C)(4), income from dissipated income-producing property may be attributed.

5. The court may decline to attribute income to either party. Examples of when it might be inappropriate to attribute income include, but are not limited to, the following:

   a. A party is physically or mentally disabled.

   b. A party is engaged in reasonable career or occupational training to establish basic skills or that is reasonably calculated to enhance earning capacity.

   c. A party's presence in the home is required because of a natural or adopted child's unusual emotional or physical needs.

   d. A party is the caretaker of a young child, and childcare costs are prohibitive.

   e. A party is retired. There is a rebuttable presumption against income attribution if a person retires and has attained full retirement age under the Social Security Act. *See* 42 U.S.C. §416(l).

   f. A party is incarcerated. The court does not usually attribute income to an incarcerated party but may consider that party's ability to pay.

Example: Pat and Marty divorced, and Pat received a $ 2,000-a-month spousal maintenance award for five years. After two years, Marty is sentenced to prison and loses employment income. But Marty is still receiving proceeds from a family trust. Marty petitions to terminate the spousal maintenance obligation. The court may attribute income to Marty after considering that Marty's criminal actions voluntarily created unemployment and that Marty still receives trust income.

C. PROPERTY TO INCLUDE WHEN DETERMINING A SPOUSE'S ACTUAL INCOME AND FINANCIAL RESOURCES

1. What is property?

a. property includes all assets capable of generating income or reducing living expenses in their current or converted form. *See Deatherage v. Deatherage*, 140 Ariz. 317, 321 (App. 1984).

b. For purposes of Actual Income and unless rebutted, the court must consider all property available to a party, including sole and separate property and assets.

c. When considering the property's income potential, the court may attribute a four percent rate of return unless rebutted.

d. The first $100,000 of a party's property is not subject to a rate of return. Property subject to a rate of return include, but are not limited to, the following:

i. An asset that increases or decreases in value because of external market conditions and can generate a rate of return to the owner (e.g., stocks, bonds, real estate, and an interest in entities where the owner is not an active participant); and

ii. If available, vested or partially vested stock options and restricted stock units, deferred compensation, and similar employment benefits.

2. What is not included as property?

The court does not consider how marital property is distributed between the spouses except to the extent such property can produce income.

3. What is double counting of property?

Property should not be double counted. Examples of when double counting can occur:

a. The community owns a 100 percent interest in a business. When the value of the business is established, the employee spouse's reasonable compensation is subtracted from the total business earnings to arrive at a present value. The spouse being bought out is awarded 50 percent of that value. Double counting

occurs if the total business earnings are also used to calculate the employee spouse's income. However, if the employee spouse's reasonable compensation is not included in the value of the business, it is not double counting to consider the employee spouse's reasonable compensation when calculating the employee spouse's income. If the court finds that income is counted twice, the court may adjust the income downward.

The same concept applies when the community owns less than a 100 percent interest, or there is a community lien on a business that is one party's separate property.

b. When there is a present value buyout of a defined benefit retirement plan, the employee spouse pays the non-employee spouse up front for their share of the future benefit. Double counting occurs if the non-employee spouse has already been paid for the future benefit up front, and that same future benefit is also used to calculate the employee spouse's income. If the court finds that the benefit is counted twice, the court may adjust the income downward.

4. **How do the excessive or abnormal expenditures or dissipation of property affect what is included as property?**

The court must consider "[e]xcessive or abnormal expenditures, destruction, concealment, or fraudulent disposition of community, joint tenancy and other property held in common." A.R.S. § 25-319(B)(11). This factor is sometimes referred to as marital waste.

If the spouse wasted an income-producing asset, the court may assign any reduction in that income to that spouse. The court may also consider marital waste as grounds for deviating under Section VI(C)(10).

SECTION IV. DETERMINING THE FAMILY'S AVERAGE MONTHLY MORTGAGE PRINCIPAL

The tables from the U.S. Bureau of Labor Statistics, Consumer Expenditure Survey do not include the principal payment of a mortgage because it considers mortgage principal payments as an accumulation of equity and not an expense. As a result, the mortgage principal must be added separately. But the calculator accounts for other housing components, such as rent, interest, taxes, insurance, interest on a home equity line of credit, and other expenditures.

The mortgage principal for all residences the family uses should be included. The mortgage principal for investment properties should not be included.

To determine the average monthly amount of this expenditure, the total principal paid for the 12 months before the action is filed is divided by 12. Unlike the other numbers in this calculator, this number is a monthly amount.

SECTION V. DETERMINING THE DURATION OF THE AWARD

A. What is Arizona's policy regarding spousal maintenance duration?

Under A.R.S. § 25-319(B), as revised effective September 24, 2022, the spousal maintenance award is only for a time period and in an amount necessary to enable the receiving spouse to become self-sufficient. In that regard, the duration of the award is directly linked to how long it will take for the receiving spouse to achieve financial self-sufficiency. *See Rainwater v. Rainwater*, 177 Ariz. 500, 503 (1993); *Schroeder v. Schroeder*, 161 Ariz. 316, 321 (1989); *Thomas v Thomas*, 142 Ariz. 386, 392 (1984).

B. How is the duration of a spousal maintenance award determined?

1. Marriage Length

   For spousal maintenance purposes, the marriage length is the number of months from the date of marriage to the date of service of process of the dissolution or legal separation petition. The time before the parties were legally married is specifically omitted from this calculation. Marriage length includes periods of physical separation without the initiation of dissolution or legal separation proceedings.

2. Duration Ranges

   If a party is eligible for spousal maintenance under A.R.S. § 25-319(A) and is entitled to an award under A.R.S. § 25-319(B), the court must apply one of the following duration ranges for the spousal maintenance award:

a. Standard Duration Ranges

i. For marriages less than 24 months, a duration range of 3 months up to 12 months of spousal maintenance;

ii. For marriages of 24 months but less than 60 months, a duration range of 6 months up to 36 months of spousal maintenance;

iii. For marriages of 60 months but less than 120 months, a duration range of 6 months up to 48 months of spousal maintenance;

iv. For marriages of 120 months but less than 192 months, a duration range of 12 months up to 60 months; and

v. For marriages of 192 months or more, a duration range of 12 months up to 96 months, subject to the Rule of 65.

Example: Lauren and Angel were married for 60 months and 1 day before the dissolution petition was served. If either party seeks spousal maintenance, the duration range in this case is between 6 and 48 months.

b. The Rule of 65

When the age of the party seeking spousal maintenance combined with the marriage length exceeds 65 (age + marriage length as of the date of service of process of the dissolution or legal separation petition), the duration range is within the court's discretion. This formula is known as the Rule of 65.

For the Rule of 65 to apply, three things must be true: (1) the party seeking the award is at least 42 years old, (2) the marriage length, as defined above, is at least 16 years (192 or more months), and (3) the age of the spouse seeking spousal maintenance plus the marriage length is equal to or greater than 65.

In qualifying cases, the duration of the award must be determined on a case-by-case basis. The public policy that underlies spousal maintenance applies, but the age of the party seeking the award combined with the length of marriage impacts a party's ability to achieve self-sufficiency with a good-faith effort within the stated duration range.

Example 1: Pat was 40 years old and had been married to Marty for 25 years when the dissolution petition was served. (40 + 25 = 65) Pat is requesting spousal maintenance. Does the Rule of 65 apply? No, the Rule of 65 does not apply because Pat does not meet the age requirement.

Example 2: Pat was 50 years old and had been married to Marty for 15 years when the dissolution petition was served. (50 + 15 = 65) Pat is requesting spousal maintenance. Does the Rule of 65 apply? No, although Pat meets the age requirement, the Rule of 65 does not apply because Pat and Marty's marriage does not meet the length requirement.

Example 3: Pat was 43 years old and had been married to Marty for 17 years when the dissolution petition was served. (43 + 17 = 60) Pat is requesting spousal maintenance. Does the Rule of 65 apply? No, Pat meets the age requirement, and Pat and Marty's marriage meets the length requirement; however, the Rule of 65 does not apply because the sum of the two numbers is not 65.

Example 4: Pat was 42 years old and had been married to Marty for 23 years when the dissolution petition was served. (42 + 23 = 65) Pat is requesting spousal maintenance. Does the Rule of 65 apply? Yes, the Rule of 65 applies because Pat meets the age requirement, the marriage meets the length requirement, and the sum of the two numbers is 65.

c. Disability of Receiving Spouse

i. Indefinite Disability

The court must set a fixed-term award under the Standard Duration Range when a disability exists but there is uncertainty about how long the disability may impact self-sufficiency. *See Huey v. Huey*, 253 Ariz. 560, 563, ¶ 8 (App. 2022). If the receiving spouse seeks to modify the duration of spousal maintenance, the receiving spouse bears the burden of proving the disability impacting the spouse's self-sufficiency continues to exist or is permanent. *Id.* at ¶ 11. The modification action must be filed before the original fixed-term spousal maintenance award expires.

ii. Permanent Disability

If the evidence shows that the party seeking spousal maintenance has a condition or a circumstance that prevents the party from ever achieving self-sufficiency, the duration of the award must be determined on a case-by-case basis after considering other financial resources.

d. Extraordinary Circumstances

When a spouse shows by clear and convincing evidence that extraordinary circumstances delay the receiving spouse from becoming self-sufficient, the court must determine the fixed-term duration range on a case-by-case basis. The court must make specific findings stating the extraordinary circumstances on which it relies.

Extraordinary circumstances include, but are not limited to:

i. The requesting party is the custodian of a child whose age or condition is such that the parent should not be required or is unable to seek employment;

ii. A catastrophic event or illness; and

iii. All actual damages and judgments from conduct that resulted in criminal conviction of either spouse in which the other spouse or a child was the victim.

C. How is the award's specific duration determined once the court decides which duration range applies?

For determining the award's specific duration, the court must consider the relevant statutory factors under A.R.S. § 25-319(B), including, but not limited to, the following:

1. The standard of living established during the marriage;

2. The marriage length;

3. The age, employment history, earning ability, and physical and emotional condition of the spouse seeking maintenance;

4. The ability of the spouse from whom maintenance is sought to meet that spouse's needs while meeting those of the spouse seeking maintenance;

5. The spouses' comparative financial resources, including their comparative earning abilities in the labor market;

6. The contribution of the spouse seeking maintenance to the earning ability of the other spouse;

7. How much the spouse seeking maintenance has reduced that spouse's income or career opportunities for the other spouse's benefit;

8. 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;

9. The time necessary to acquire sufficient education or training to enable the party seeking maintenance to find appropriate employment and whether such education or training is readily available.

D. For duration purposes, what is the starting date for a spousal maintenance award?

Unless the court orders otherwise, the spousal maintenance award begins on the first day of the first month following entry of the decree of dissolution of marriage or legal separation. Unless the court orders otherwise, a temporary spousal maintenance award is not part of the final award duration. *See* Section VII.

For temporary orders, the starting date is the first day of the month following the service of the temporary orders motion. *See* Section VII.

E. Are "lifetime" awards permitted?

Under Arizona law, there are no "lifetime" awards. Historically, indefinite-term spousal maintenance awards were mischaracterized as "lifetime" awards. Under the Guidelines, the court must determine the duration range according to Section V. When the court enters a fixed-term award, the burden of proof for any modification action brought during the term of the award is on the receiving spouse to establish that there are substantial and continuing changed circumstances to extend the duration of the award. When the court enters an indefinite-term award, the burden of proof for any future modification action to terminate the award or shorten its duration is on the paying spouse

to show there are substantial and continuing changed circumstances to terminate the award or set a fixed date for its termination. The court should consider where the burden of proof for future modifications is appropriately assigned in determining whether to order a fixed-term versus indefinite-term award. If the burden of proof is more properly on the receiving spouse, the court must order a fixed-term award.

SECTION VI. DEVIATIONS IN CONTESTED SPOUSAL MAINTENANCE CASES

A. A deviation occurs when a court orders spousal maintenance in an amount outside the amount range. Without an agreement, the court must apply the duration ranges. But an agreement by the parties as to amount or duration is not a deviation.

B. The court must deviate if, after considering all relevant factors, including those outlined in A.R.S. § 25-319(B) and applicable caselaw, it makes written findings stating:

1. Why an amount within the amount range is inappropriate or unjust in the particular case;

2. What the amount range would have been without the deviation; and

3. What the order is with the deviation.

C. In considering whether to deviate from the amount range, the court must consider all relevant factors including, but not limited to the following:

1. The standard of living established during the marriage;

2. The marriage length;

3. The age, employment history, earning ability, and physical and emotional condition of the spouse seeking maintenance;

4. The ability of the spouse from whom maintenance is sought to meet that spouse's needs while meeting those of the spouse seeking maintenance;

5. The spouse's comparative financial resources, including their comparative earning abilities in the labor market.

6. The contribution of the spouse seeking maintenance to the earning ability of the other spouse;

7. How much the spouse seeking maintenance has reduced that spouse's income or career opportunities for the other spouse's benefit;

8. The ability of both parties after the dissolution or legal separation to contribute to the future educational costs of their mutual children;
9. 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;

10. Excessive or abnormal expenditures, destruction, concealment, or fraudulent disposition of community, joint tenancy, and other property held in common;

11. The cost for the spouse seeking maintenance to obtain health insurance and the reduction in the cost of health insurance for the spouse from whom maintenance is sought if the spouse from whom maintenance is sought can convert family health insurance to employee health insurance after the marriage is dissolved;

12. All actual damages and judgments from conduct that led to the criminal conviction of either spouse in which the other spouse or a mutual child was the victim;

13. The payment or receipt of spousal maintenance would compromise the spouse's ability to receive and afford out-of-pocket necessary or extraordinary health care or mental health services;

14. One spouse is the custodian of a child whose age or condition is such that the custodian should not have to seek employment outside the home;

15. One or both spouses reside in a location with significant price variation from the other spouse such that a deviation is necessary for parity between the spouses; or

16. The tax rates for each spouse.

D. The court may consider that there are expenses not included in the Spousal Maintenance Calculator as grounds for deviating from the presumptive range. Still, the following expenses are already included in the Spousal Maintenance Calculator and should not be grounds for deviating absent evidence of extraordinary expenses:

1. Health, dental, and vision insurance, and medical services, supplies, and drugs;

2. Utilities, fuels, and public services (excludes cable and satellite);

3. Housing (including mortgage principal payments);

4. Food;

5. Apparel and services (excludes children's costs);

6. Transportation;

7. Reading materials;

8. Personal care products and services;

9. Life insurance and other personal insurance;

10. Entertainment;

11. Tobacco products and smoking supplies; and

12. Alcoholic beverages.

E. It is not a deviation to:

1. Award spousal maintenance in an amount that decreases gradually over time, otherwise known as a step-down award, if the amounts are within the amount range.

2. Round off the monthly spousal maintenance amount for ease of accounting.

3. Compromise on any individual figure incorporated in the Spousal Maintenance Calculator.

4. Adopt an agreement of the parties to an amount or a duration of spousal maintenance outside the amount or duration ranges in the Guidelines, if the court finds the following criteria are met:

   a. The agreement is in writing or stated on the record under Rule 69, Arizona Rules of Family Law Procedure;

b. All parties have entered the agreement free of duress and coercion; and

c. If the parties have entered into a written separation agreement under A.R.S. § 25-317 regarding spousal maintenance, and the court finds the agreement complies with A.R.S. § 25-317.

5. Adopt an agreement entered into during the pendency of the dissolution or legal separation petition when all parties have entered into the agreement with knowledge of the amount of spousal maintenance that would have been ordered under the Guidelines but for the agreement.

6. Deny a spousal maintenance request if the combined annual Spousal Maintenance Income is less than $44,000.

SECTION VII. TEMPORARY ORDERS

The policy underlying temporary orders is to maintain, if possible, the status quo while the case proceeds through the court. To that end, efficiency and expediency are the primary concerns.

To accomplish the twin goals of efficiency and expediency, the court must apply the Guidelines subject to these presumptions:

A. Income will not be attributed to the receiving spouse if the receiving spouse has not been employed full-time by a bona fide employer for at least 24 months immediately before the petition was filed. A closely held business is not a bona fide employer if the receiving spouse did not work for the pay received.

B. The amount range under the Guidelines applies.

The court must consider the allocation of expenses in making the temporary order because the Spousal Maintenance Calculator presumes the expenses are equally divided.

A temporary order does not prejudice the rights of the parties to be adjudicated at later hearings in the proceedings. The court can review and modify temporary orders when it resolves the case based on all the evidence rather than the more limited information that existed early in the case.

Unless the court orders otherwise, a temporary spousal maintenance award is not included in the final award duration period. *See* § V(D).

SECTION VIII. MODIFICATIONS

Modification petitions are governed by A.R.S. § 25-327 and the caselaw interpreting that section. *See e.g., Sheeley v Sheeley*, 10 Ariz. App. 318, 321 (1969) (A post-decree increase in the paying spouse's income, by itself, does not constitute a changed circumstance because the former spouse has no continuing right to share in the other spouse's post-decree increased earnings.).

A. What duration range applies when a party seeks to modify duration?

To extend the spousal maintenance award beyond the duration of the original award, the receiving spouse must show substantial and continuing changed circumstances after the entry of the initial spousal maintenance award. *See* A.R.S. § 25-327(A). When a substantial and continuing change in circumstances establishes that an extension of the award is appropriate, the modified term of the award may not exceed the maximum applicable Standard Duration Range unless a disability or extraordinary circumstance occurs after the award.

B. May the retirement of the party paying spousal maintenance during the term of the award constitute changed circumstances for modification purposes?

Yes. Under Arizona caselaw, the retirement of the paying party may constitute a change in circumstances for modification purposes. To establish amount or duration, it is inappropriate to consider what may occur in the future affecting employment and retirement. The correct approach is for the affected party to wait until the anticipated event occurs and then seek modification or termination of the award. *Chaney v Chaney*, 145 Ariz. 23, 26-27 (App. 1985).

C. If changed circumstances are found, what information is used in the Spousal Maintenance Calculator?

1. Family Size.

   Use the same family size that applied at the dissolution or legal separation. The family size may be reduced if there is no longer a legal obligation to support a child who was included in the family size in the original spousal maintenance order.

Enter the lesser of:

a. the family size that existed at the time of the entry of the spousal maintenance order subject to modification; or

b. the family size that now would apply if an original spousal maintenance order were being determined.

Example 1: At the time of their divorce, Chris and Pat had two minor children common to the marriage, so the family size was 4. When Chris petitions to modify the support order, one of their children is now 22 years old. The family size is now 3.

Example 2: At the time of their divorce, Chris and Pat had two minor children common to the marriage, so the family size was 4. When Chris petitions to modify the support order, he has another child with his new wife. The family size remains four because Pat has no legal obligation to support the new child.

2. Mortgage Principal.

   Do not include the mortgage principal in the modification calculation.

D. Do the Guidelines apply to modification petitions?

The effective date of the amendments to A.R.S. § 25-319 was September 24, 2022. As stated in Section I(C)(2), the Guidelines apply to modification petitions as follows:

1. For original dissolution of marriage or legal separation petitions filed **on or after** September 24, 2022.

   The court must apply the Guidelines. When deciding a modification petition subject to the Guidelines, a party can establish a substantial and continuing change of circumstances by showing that applying the Guidelines would change an existing order.

2. For original dissolution of marriage or legal separation petitions filed **before** September 24, 2022.

   The Guidelines do not apply and cannot form the basis for finding changed circumstances under A.R.S. § 25-327. If a party otherwise establishes changed

circumstances, the court may, but need not, consult the Guidelines to determine the amount—but not the duration—of an award.

Prepared by Hon. Patricia A. Green

Commissioner/Judge Pro Tem – Pima County Superior Court

The following information is not all-inclusive and is intended as a guide to practitioners when advising clients who pay child support, and to provide a primer for statutory authority and other resources for issues that may (frequently do) arise.

1. Payment of child support is your responsibility, not the responsibility of your employer. The Court will issue an Income Withholding Order (IWO) to your employer to better assure consistent payment of support. *See* A.R.S. §25-505.01(M) and (N). You may make direct payments by mailing a check, money order or cashier's check to the Support Payment Clearinghouse. Keep in mind that payments made by mail will take several days to arrive, which could result in a late payment. DCSS has a Resource Guide that identifies several methods/locations for payments at page 5. CSE-1299A - DCSS Customer Resource Guide (az.gov)
    a. Payments not made through the Clearinghouse may be considered gifts, but there is a method by which the receiving parent can provide written notice to the court to allow credit for such direct payments. A.R.S. §25-510(G) and (H). Again, be careful not to rely on an oral promise by the receiving parent to give you credit for any child support payment given to that parent and not made through the Clearinghouse – get written confirmation.
    b. Clearinghouse records are prima facie evidence of all payments and disbursements. A.R.S. §25-510(B).
2. If your employer withholds child support from your paycheck, it is their responsibility to send the funds to the Clearinghouse for credit to your account. (A.R.S. §25-504(E) and (H)) **BUT**
    a. It remains your responsibility to assure you are receiving credit for the payments. Do not presume that just because the money is shown as deducted from your payroll that the funds have made it to the Clearinghouse.
    b. You should regularly review your payment history either on the internet at the DCSS website https://dcssprod.azdes.gov/dcss/edcss/index.jsf or -- in Pima County -- by requesting a payment history from the Court's Child Support Clerk (there is a $30.00 fee for the print-out if you walk-in, or you can request the print-out over the phone and receive it in the mail or by fax for $37.00 – call 520-724-3250). See A.R.S. §25-510(C) ("[C]lerk . . . to provide payment histories to all litigants, attorneys and interested persons and the court."). There is a Maricopa County website that provides a summary for the most recent three years with monthly and year-end totals. https://familysupportcenter.maricopa.gov/DES/default.asp (there is a disclaimer regarding accuracy).
3. Modification and/or termination of child support is not automatic[1] and, generally, child support remains payable pursuant to the most recent Child Support Order (CSO) until such time as there

[1] There is an exception, identified in A.R.S. §25-503(P) if the parent receiving support (obligee) marries the parent paying support (obligor), the order automatically terminates on the last day of the month in which the marriage takes place, but arrears that accrued prior to the date may still be subject to collection. Additionally, if the obligee

is a formal Court Order modifying or terminating that CSO. A.R.S. §25-327. **DO NOT** rely on any verbal agreement you believe you may have with the other parent regarding changes to your CSO.

4. If you believe (or know) there is a change of circumstances that warrants a review of the latest CSO and you and the other parent are unable to agree to file documents modifying the CSO, you should:
    a. Perform child support calculations using the Arizona Supreme Court calculator https://www.azcourts.gov/familylaw/Which-Child-Support-Calculator-Should-I-Use inserting the information you have available to determine whether your calculations result in an amount of child support that is at least 15% different than the amount in the last CSO. A.R.S. §25-320, Guidelines Section XIV.C.a. and XVII.B. (presumptive change of circumstances if result varies 15% from existing amount).
    b. File a petition for modification of child support on your own behalf, or have an attorney prepare and file one for you, and timely serve the other parent.
    c. If the State is involved (IV-D), contact your DCSS caseworker and request that the State review the case and file on your behalf. Keep in mind that DCSS manages a high volume of cases, and your documents may not be filed with the Court for several weeks (if not months).
    d. Remember that any modification of child support is effective the first day of the month after notice to/service on the other parent or, at the earliest the date of filing the petition if the court finds good cause to use such earlier date. A.R.S. §25-327(A) and 25-503(E).
    e. If the changed circumstances involve incarceration or a medically confirmed disability, you may be entitled to a modification of your child support obligation to zero during any period of incarceration (A.R.S. §25-320, Guidelines Section II, para.5.a.: "The Court does not attribute income to a person who is incarcerated. . . ."), or to suspension of any future interest that accrues during the period of any incarceration and/or disability (A.R.S. §25-327(D)). The burden is on the parent paying support to timely notify the Court of the incarceration or disability determination. However, DCSS may receive notice of incarceration and file a petition to modify, but this is not guaranteed, and such filing may occur months (or longer) after the initial period of incarceration.
5. Child support obligations are FOREVER, and interest accrues at 10% annually (A.R.S. §25-510(E)), except that a judgment for past care and support entered on or after September 26, 2008, does not accrue interest for any time period. (A.R.S. §25-510(F)). There is no statute of limitations on the collection of past due/unpaid child support. A.R.S. §25-503(M) (support judgment exempt from renewal and enforceable until paid in full). The paying parent may assert a defense to collection if they can establish an unreasonable delay in attempting to collect support when the collection efforts are made more than ten years after emancipation of the youngest child subject to the order. A.R.S. §25-503(L).
    a. When establishing a payment on arrears, the court must consider the amount of interest that accrues on the principal balance and set the monthly arrears payment in an amount that will, at a minimum, cover the accruing interest, absent a finding of good cause to set the payment at a lower amount. A.R.S. §25-320, Guidelines Section XVI.B.

voluntarily relinquishes physical care of the child to the obligor, the obligor may assert a defense to the collection of arrears that accrued under specified circumstances. A.R.S. §25-503(J) and (K).

   b. If this is a IV-D case, you will want to request that the court require a court order to modify the monthly payment on arrears, and thereby prevent DCSS from issuing an Administrative Order increasing the monthly arrears payment.

6. If you are allocated use of the dependency tax exemption(s) for the child(ren), remember:
   a. You must be current with all court-ordered support payments (including any payments on arrears and past care and support judgments) for the relevant calendar year, described as no later than January 20 of the immediately following year. The burden is on the parent who wants to deny use of the dependency exemption to establish the basis and to provide timely written notice to the other parent.
   b. The parent who is paying support and who believes they should receive the tax benefit has the burden to file an enforcement petition with the court within 20 days of receipt of the written notice from the parent receiving support.
   c. Review A.R.S. §25-320, Guidelines Section XI for more details.

TIPS FROM THE BENCH

Honorable Michael J. Herrod
Judge of the Maricopa County Superior Court

(Adapted from Materials Supplied by Hon. Suzanne Marwil)

- *Be part of the solution, not the problem*: Model appropriate behavior in court for your client. Please do not interrupt the judge or the other party when he or she is speaking. Practice civility, in the courtroom and outside of it, and hopefully your clients and adversaries will do the same.

- *Prepare, Prepare, Prepare:* We all are busy, but a little preparation can save so much time. It can identify whether items needed for the hearing or trial are missing so that the trial or hearing can proceed smoothly. Also, spend at least a few minutes preparing your client or speaking to the opposing party to attempt to limit the issues.

- *Make court time matter:* It's a big deal to come to court, ensure that when you do, something meaningful can get done. It frustrates everyone to simply kick the can down the road. If you just need more time or to schedule some future events, consider a joint call to the Division instead.

- *Joint filings are appreciated:* Whenever possible contact the opposing party and file jointly. This does not mean you must agree on every issue; it simply gives the court both positions at the same time and obviates the need to hold or "tickle" filings.

- *Be brief*: Hit the salient points and tell the court what you need. Provide some context of course but don't make the court wade through a mountain of paper without direction to see how it can help. For voluminous exhibits, direct the Court to what you want it to read.

- *Real versus manufactured emergencies*: Please save the emergency motion for those truly pressing situations that require urgent attention. You lose credibility if you call too many things an emergency.

- *E-filing is not instantaneous:* Please provide a copy to the Division via email or by other means as it can take e-filed documents several business days to be docketed. More so, if the documents are scanned rather than electronic.

- *Read Minute Entries and Pre-Trial Orders*: This will provide guidance as to how each judge wants items handled, and will often provide important deadlines such as when exhibits need to be filed. Too many practitioners overlook these deadlines and create delay or additional work for the clerk of court and court staff.

JA TIPS

Hon. Michael J. Herrod

Judge of the Maricopa County Superior Court

Provided By Judicial Assistant Alaina Dykes With Input from

Other Judicial Assistants

1- The JA is not your assistant.

2- When requesting a continuance on a hearing:

   a. If it is more than a week out, get positions THEN file a motion and email a copy to the JA.

   b. If it is less than a week out, get positions and then email the JA and file a motion.

3- Do not call or email the JA every time you want something done in your case. File the appropriate paperwork.

   a. Do not ask the JA what paperwork should be filed.

4- Clients should not be given the division number to call and ask the status of rulings.

5- When a motion is filed, do not call the JA and ask if the Judge has ruled on the motion if the time for a response has not passed.

6- Do not call the JA and ask when the next hearing is and what the last Minute Entry ordered.

7- Do not call and ask the JA for your calendar schedule.

8- Be nice to the JA. Treat them like you would treat the judge, or better. Typically, the JA sits right outside the Judge's chambers, and judges keep their doors open. The Judge will pick up if you are being rude or unreasonable with the JA.

9- Do not ever throw the JA, CA, Courtroom Clerk, or Court Reporter under the bus. The team in chambers is very close knit, and typically they tell the Judge everything.

THE INTERFACE BETWEEN FAMILY COURT AND JUVENILE COURT

Hon. Michael J. Herrod
Judge of the Maricopa County Superior Court

1. BIA Private Dependency Petitions

a. Will be seen by a Duty Judge – this takes 4-5 minutes. A duty judge typically sees 25-60 new petitions in a week of duty. That is in addition to doing a regular morning and afternoon calendar.
b. Current practice is not to enter temporary physical custody orders, unless.
    i. You ask for it and give a factual basis.
    ii. Best to point it out in **bold.**
c. Current practice is to not join DCS as a party, but to order an investigation.
d. If we order temporary physical custody, that is a removal, and we will set a Preliminary Protective Hearing (PPH) within 5 days. PPH time slots are fixed into the calendar and set by the Court Administration. You get little advance notice, with no flexibility. A Preliminary Protective Conference (PPC) with a mediator precedes the PPH.
e. Typically, we set an Initial Dependency Hearing (IDH) within 7-10 days.
f. Often DCS will not complete an investigation before the PPH because of time constraints and no prior contact with the family – this may result in a continued IDH.
g. If the Court enters temporary custody orders at the IDH, that is a removal and may require a PPH, unless the parents agree to the placement.
h. DCS is resistant to using Title 14 guardianships to short-circuit the Dependency process.
i. Make sure there is a health or safety concern, private dependency is not a stand-in for a third party custody proceeding unless there is a safety issue. Best interests is part of the juvenile court analysis, but the juvenile court cannot litigate a straight best interest custody case.

2. Entry of Family Court Orders at Dismissal of A Dependency

a. This is usually done in a 15-minute hearing with no written motion and no proposed form of Order. However, a proposed form of Order is welcome.

b. The Juvenile Court can initiate a Family Court case if the parents are not married. If the parents are married, a dissolution must be filed first. If that has not been done, ask to be granted leave to file the dissolution, and ask for a Status conference at which to enter the family court orders and dismiss the dependency. This is where a proposed form of Order regarding legal decision-making and parenting time will be helpful.

c. Judges differ on what they will order. Some will only enter temporary orders that expire after a period of time if nothing is filed in Family Court. Others will enter temporary orders that become permanent if no modification is filed within a period of time – 90 days, 120 days, 180 days, one year.

d. If temporary orders are entered, no change of circumstances is necessary to ask for a modification. Once the orders become permanent, a showing of change of circumstances is necessary.

e. Most juvenile judges will typically maintain the status quo that existed at the end of the dependency. Whichever parent successfully completed services and obtained physical custody of the child or children will likely get sole legal decision-making and the other parent who was not successful will get parenting time based on what they were getting; supervised or unsupervised.

f. Typically, the Orders will not be very detailed.

g. There will be no Petition in the Family Court file to tie the Orders to, although the Juvenile Court and Family Court judges are discussing a mechanism for that.

h. The Juvenile Court Judge will generally order that a copy of the Dependency Petition, Dependency Order, and a Court Report or Court Reports be filed as confidential documents in the Family Court file, so that the Family Court Judge can see them.

3. Family Court Proceedings while there is a Dependency in Juvenile Court

a. The Juvenile Court has exclusive jurisdiction over child custody, parenting time, and visitation while a dependency is proceeding.
b. Other Family Court matters may proceed – dissolution, property settlement, spousal maintenance, child support, arrears.
c. In some instances, the Juvenile Court can consolidate the proceedings, and enter orders regarding child support. Consolidation cannot be ordered in Title IV-D cases.
d. Child Support arrears payments, spousal maintenance payments, and spousal maintenance arrears payments should continue.
e. If parental rights are terminated, the Family Court loses jurisdiction over the child or children, except to enforce prior orders.

The Tools of the Child-Custody Tool Box

Hon. Michael J. Herrod
Judge of the Maricopa County Superior Court

1. Delegation of Powers by Parent or Guardian (Minor Power of Attorney) - A.R.S. § 14-5104

a. Executed by Parent or Guardian.
b. May not Exceed 6 months (can be successive).
c. Powers related to care custody and property of a minor child.
d. May not consent to marriage or adoption.

2. Third-Party Custody – A.R.S. § 25-309

a. All have to be true.
    i. The person filing stands in loco parentis to the child.
    ii. Significantly detrimental to the child to be placed in the care of either legal parent.
    iii. No legal decision-making or parenting time order within one year before – unless the present environment may seriously endanger the child's physical, mental, moral, or emotional health.

b. One has to be true
    i. One of the legal parents is deceased.
    ii. The child's parents are not married to each other at the time the petition is filed.
    iii. A proceeding for dissolution or legal separation is pending at the time the petition is filed.

c. Rebuttable presumption that awarding legal decision-making to a legal parent serves the child's best interests.

d. The presumption may be rebutted by clear and convincing evidence.

3. Guardian of a Minor Under Title 14 - A.R.S. § 14-5204

a. Any person interested in the welfare of the minor (14-5207).
b. All parental rights of custody have been terminated or suspended by circumstances or prior court order.
    i. Prior termination of parental rights.
    ii. Consent from parents (*Matter of Mikrut,* 175 Ariz. 544 (App. 1993).
    iii. Withdrawal of consent results in termination of guardianship.

4. Private Dependency Under Title 8 – A.R.S. § 8-841

a. May be filed by the Department of Child Safety or Any Interested Party.

b. We may be the only state that allows Private Dependency.

c. Exception for certain delinquent children (8-841(B).

d. Must contain a concise statement of facts to support the conclusion that the child is dependency (A.R.S. § 8-201(B)(15).
    i. No parent or guardian willing to exercise or capable of exercising proper and effective parental care and control.
    ii. Destitute or who is not provided with the necessities of life, including adequate food, clothing, shelter or medical care.
    iii. Home unfit by reason of abuse, neglect, cruelty or depravity by a parent, a guardian, or any other person having custody or care of the child.
    iv. Other grounds probably do not apply in a private dependency.

e. When a Dependency is filed, it goes to a weekly duty judge.
    i. Private dependencies are typically set for an Initial Dependency Hearing without making an emergency physical custody order **(This is a recent change by the juvenile bench)**.
    ii. If an emergency custody physical custody order is entered, that is a removal and a Preliminary Protective Hearing will be set within 5 days.

iii. The Department of Child Safety is typically not joined as a party, but is ordered to do an investigation for the Initial Dependency Hearing.
iv. If you want an emergency physical custody order, you need to allege sufficient facts for the Court to order a removal, and **you need to ask for it in your Petition,** probably in **bold type**.
v. A duty judge spends about 4 minutes entering the orders because we use an electronic form with check boxes. However, one of the things we are looking for is whether to enter an emergency physical custody order.

5. Title 8 Permanent Guardianship – A.R.S. § 8-871

a. Child has been adjudicated dependent or is the subject of a pending dependency petition.
b. If child is not adjudicated dependent, pre-adjudication guardianship may be granted if no party objects. If a party objects, the Court may conduct a mediation or proceed with the dependency. By implication, there can be no guardianship adjudication if the child has not been found dependent.
c. If child is adjudicated dependent, the Court may conduct a contested guardianship hearing.
d. The trial is called a guardianship adjudication hearing.
e. Subject to the Indian Child Welfare Act.
f. A non-appearance review hearing will be set in one year.
g. Usually, there are no further review hearings
h. In order to revoke, the parent or parents must show a change of circumstances.
i. The dependency action is dismissed, but the Court retains jurisdiction to enforce the guardianship order.

6. Private Termination of Parental Rights – A.R.S. § 8-533

a. Any person or agency who has a legitimate interest in the welfare of the child, including a relative, a foster parent, a physician, the department or a licensed child welfare agency may filed a petition

b. Grounds (Definitions in A.R.S. § 8-531
    i. Abandonment.
    ii. Neglect or willful abuse.
    iii. Mental illness, mental deficiency, or a history of chronic abuse of dangerous drugs, controlled substances or alcohol and there are reasonable grounds to believe that the condition will continue for a prolonged indeterminate period.
    iv. A parent is deprived of liberties due to a felony conviction, when the felony is of such a nature as to prove the unfitness of that parent to have future custody and control of the child, including manslaughter of another child of the parent, or aiding or abetting or attempting, conspiring or soliciting to commit murder or manslaughter of another child of the parent.
    v. A parent is sentenced to a felony sentence that will deprive the child of a normal home for a period of years.
    vi. Failure to file a paternity action as a potential father within thirty days after receiving Notice under A.R.S. § 8-106.
    vii. Failure to file a notice of claim of paternity as a putative father under A.R.S. § 8-106.01.
    viii. Consent by parents.
    ix. Time in care grounds apply to DCS.
    x. Identity of parent is unknown following three months of diligent efforts to identify and locate the parent.
    xi. Prior termination of parental rights within two years for the same grounds.
    xii. Child conceived by sexual assault on the petitioning parent – clear and convincing evidence.

7. Emancipation of a Minor A.R.S. § 12-2451

a. Must be at least sixteen.
b. Must be a resident of this state.
c. Must be financially self-sufficient.
    i. Ability to manage affairs including proof of employment or other means of support.
    ii. Ability to manage personal affairs including proof of housing.
    iii. Demonstrated ability to live wholly independent of parents.

iv. Demonstrated ability and commitment to obtain or maintain education, vocational training or employment.
v. How the Minor with obtain health care.
vi. At least one of the following:
    1. Documentation that the minor has been living on the minor's own for at least three consecutive months;
    2. A statement explaining why the minor believes the home of the parent or legal guardian is not a healthy or safe environment;
    3. A notarized statement that contains written consent and an explanation by the parent or guardian.
vii. Whether the minor has received an offer of employment.

8. Considerations

a. Are the parent or parents cooperative?
b. How long will the child need care by someone other than the parent? Six months, a year, duration of minority
c. Is the issue a safety issue, or merely a best interests issue?
d. Will the parent consent to a guardianship?
e. What is the end goal? Short-term care of the child, Long-term care of the child, or termination of parental rights followed by adoption.
f. What are the financial resources available to the petitioner?
g. Does the family want to invite the Department of Child Safety into their lives?
    i. Oversight;
    ii. Initial case plan of Family Reunification;
    iii. Are there criminal or DCS background issues that could preclude petitioner from being approved by DCS?;
    iv. Presence of drug or alcohol abuse;
    v. Any criminal investigation in progress?
h. Do you need an emergency order?
i. Can you make a prima facie case for dependency or termination?
j. Does the Indian Child Welfare Act apply? Dependency, Termination of Parental Rights, Title 8 Guardianship

k. What tribe or tribes will require notice? (Example – there are three Cherokee Bands – all must be given notice because you never know which one).

Family Law Track
Day 3

July 12, 2023
8:15am – 12:30pm

THE APPELLATE PROCESS

KRISTI REARDON; BERKSHIRE LAW OFFICE
ERICA LEAVITT; SCHMILLEN LAW FIRM

STATE BAR OF ARIZONA

1

WHY PRESERVING THE RECORD IS ESSENTIAL FOR YOUR APPEAL

- Appellate Courts will generally not consider for the first time on appeal arguments that were not presented to the trial court. *Hannosh v. Segal*, 235 Ariz. 108, 328 P.3d 1049, 1056 (App. 2014)
- "Because a trial court and opposing counsel should be afforded the opportunity to correct any asserted defects before error may be raised on appeal, absent extraordinary circumstances, errors not raised in the trial court cannot be raised on appeal." *Trantor v. Fredrikson*, 179 Ariz. 299, 300 (1994)

STATE BAR OF ARIZONA

2

PRESERVING THE RECORD PRIOR TO TRIAL

Motions and Pretrial Statement

When a party files a pretrial statement, it must include "detailed and concise statements of contested issues of fact and law" and "a position on each contested issue." ARFLP76.1(g).

Leathers v. Leathers, 216 Ariz. 374 (App. 2007)

"The pretrial statement controls the subsequent course of the litigation." citing *Carlton v. Emhardt*, 138 Ariz. 353, 355 (App.1983).

Larchik v. Pollock, 252 Ariz. 364 (App. 2021)

- "….disclosure of [an] opinion in her pretrial statement rendered it admissible against her, and once Husband cited it to the family court, the opinion constituted some evidence that the Business had increased in value. *See Ryan*, 228 Ariz. at 47, ¶ 16; Ariz. R. Fam. Law 76.1(f)(7) (pretrial statement must contain a party's "position on each contested issue")."

STATE BAR OF ARIZONA

3

PRESERVING THE RECORD PRIOR TO TRIAL

Failure to Request Findings of Fact Could Result in Waiver of an Issue on Appeal

If Rule 82(a) has been invoked, there must be a sufficient factual basis that explains how the family court actually arrived at its conclusion. *Miller v. Bd. of Sup'rs of Pinal Cty.*, 175 Ariz. 296, 299 (1993).

"[I]n order to satisfy the rule, the court's findings must encompass all of the 'ultimate' facts-that is, those necessary to resolve the disputed issues in the case." Elliott v. Elliott, 165 Ariz. 128, 132 (App. 1990).

Stein v. Stein, 238 Ariz. 548, 551 ¶ 12 (App. 2015) ("Although we might infer reasons for [a holding], when a party has invoked Rule 82(a), appellate courts do not employ such inferences.

Kelsey v. Kelsey, 186 Ariz. 49, 51 (App. 1996) ("*If the trial court's basis for a conclusion is unclear, this Court may not affirm simply because we may find some possible basis for that conclusion in the record.*").

This Court assumes the trial court considered all competent evidence that was presented and was familiar with the record. *Fuentes v. Fuentes*, 209 Ariz. 51, 55-56, ¶ 18 (App. 2004).

When neither party has requested findings of fact, this Court is "constrained by the presumption" that the trial court found every fact necessary to support the ruling. *Neal v. Neil*, 116 Ariz. 590, 592 (1977)

STATE BAR OF ARIZONA

4

INVOKING THE RULES OF EVIDENCE

- Rule 2. Applicability of the Arizona Rules of Evidence

> (a) Effect of a Rule 2(a) Notice; Time for Filing. Any party may file a notice to require compliance with the Arizona Rules of Evidence at a hearing or trial. A party must file the notice at least 45 days before the hearing or trial, or by another date set by the court. If a hearing or trial is set fewer than 60 days in advance, the notice is deemed timely if a party files it within a reasonable time after the party is notified of the hearing or trial date.

STATE BAR OF ARIZONA

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PRESERVING THE RECORD PRIOR TO TRIAL

- If **Rule 2 is NOT invoked**– the following Rules of Evidence **DO NOT APPLY**

Rule 602 – Personal Knowledge

> A witness may testify to a matter only if evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. Evidence to prove personal knowledge may consist of the witness's own testimony. This rule does not apply to a witness's expert testimony under Rule 703.

Rules 801-806 - Hearsay

Rules 901-903 - Authentication

Rules 1002-1005 - Originals/Summaries

STATE BAR OF ARIZONA

6

PRESERVING THE RECORD DURING TRIAL

- Objections

- An evidentiary objection on one ground preserves the issue only as to that ground; if a party asserts a different ground on appeal, the issue is subject—at most—to review for fundamental, prejudicial error. *Ruben M. v. Ariz. Dep't of Econ. Sec*., 230 Ariz. 236, 239, ¶ 13 (App. 2012).
- To preserve evidentiary errors for appeal, counsel must make specific objections to the admission or rejection of evidence on the trial court record. *See* Ariz. R. Evid. 103(a) Objections cannot be made for the first time on appeal. *State v. Montano*, 204 Ariz. 413, 426, ¶ 62 (2003) (absent fundamental error, failure to object to the admission of evidence constitutes waiver of that objection).
- A party who wants to contest the trial court's exclusion of evidence must make an offer of proof on the record of what the evidence would have been, unless the nature of the testimony or evidence, its relevancy and materiality are obvious. *See* Ariz. R. Evid. 103(a)(2); *State v. Hernandez*, 232 Ariz. 313, 322, ¶ 42-43 (2013); *Molloy v. Molloy*, 158 Ariz. 64, 68 (App. 1988) (offers of proof serve the dual function of enabling the trial court to appreciate the context and consequences of an evidentiary ruling and enabling the appellate court to determine whether any error was harmful). An offer of proof might not be necessary where the purpose and substance of the evidence are obvious, or when the trial court has ruled broadly that no evidence is admissible in support of the theory or fact sought to be established. *See* Ariz. R. Evid. 103(a)(2); *Molloy,* 158 Ariz. at 69.

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PRESERVING THE RECORD DURING TRIAL

Offers of Proof

- If the ruling excludes evidence, you must inform the court of its substance by an offer of proof, unless the substance was apparent from the context.
- You Do Not Need to Renew an Offer of Proof. Once the court rules on the record, a party need not renew an offer of proof to preserve a claim of error for appeal.
- An appellate court will not review alleged error at trial where the appealing party has failed to make a proper record by making a specific objection or an offer of proof if the ruling is one excluding evidence. *Montano v. Scottsdale Baptist Hosp., Inc.*, 119 Ariz. 448, 453 (1978).

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8

PRESERVING THE RECORD AFTER TRIAL

IS THE ORDER APPEALABLE:

- ARFLP 78(b):

(b) Judgment upon Multiple Claims or Involving Multiple Parties. When more than one claim for relief is presented in an action, whether as a claim, counterclaim, or third-party claim, or when multiple parties are involved, the court may direct the entry of a final judgment as to one or more, but fewer than all, claims or parties only if the court expressly determines there is no just reason for delay and recites that the judgment is entered under Rule 78(b). If there is no such express determination and recital, any decision, however designated, that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties does not end the action as to any of the claims or parties, and is subject to revision at any time before the entry of a judgment adjudicating all the claims and all the parties' rights and liabilities. For purposes of this section, a claim for attorney fees is considered a separate claim from the related judgment regarding the merits of the action.

STATE BAR OF ARIZONA

9

PRESERVING THE RECORD AFTER TRIAL

IS THE ORDER APPEALABLE:

- ARFLP 78(C):

(c) Judgment as to All Claims, Issues, and Parties. A judgment as to all claims, issues, and parties is not final unless the judgment recites that no further matters remain pending and that the judgment is entered under Rule 78(c).

STATE BAR OF ARIZONA

10

PRE-DECREE TIME EXTENDING MOTIONS

- **ARCAP 9**
- **(e) Effect of Post-Judgment Motion on Notice of Appeal; Amended Notice of Appeal.**
  - (1) If a party timely and properly files with the superior court clerk any of the following motions, the time to file a notice of appeal or cross-appeal for all parties begins to run from the entry by the superior court clerk of a signed written order disposing of the last such remaining motion:
    - (A) For judgment under Rule 50(b) of the Arizona Rules of Civil Procedure;
    - (B) To amend or make additional factual findings under Rule 52(b) of the Arizona Rules of Civil Procedure **or Rule 82(b) of the Arizona Rules of Family Law Procedure,** whether or not granting the motion would alter the judgment;
    - (C) To alter or amend the judgment under Rule 59(d) of the Arizona Rules of Civil Procedure or **Rule 83(a) of the Arizona Rules of Family Law Procedure**;
    - (D) For new trial under Rule 59(a) of the Arizona Rules of Civil Procedure; or
    - (E) For relief under Rule 60 of the Arizona Rules of Civil Procedure, if the motion is filed not later than 15 days after entry of the judgment; or for relief under **Rule 85 of the Arizona Rules of Family Law Procedure**, **if the motion is filed not later than 25 days after entry of the judgment.**

11

POST-DECREE APPEALS - *YEE* AND *BLOS*

- Yee v. Yee, 251 Ariz. 71 (App. 2021).
- Mother filed Post Decree Rule 85 Motion
  - December 2019 - Trial Court found it was late and arguments were waived, and denied it
  - December 2019 – Mother filed Rule 83 Motion
  - January 14, 2020 – Court enters fee award related to December 2019 Minute Entry
  - January 21, 2020 – Court issues Minute Entry denying Rule 83 Motion
  - February 4, 2020, the court issued minute entries clarifying the January 14 judgment awarding fees and modifying the January 21 minute entry, nunc pro tunc
  - March 2020, Mother asked the court to enter a "final order" she submitted, which stated that "no further matters remain pending and that the judgment is entered under Rule 78(c)."
  - April 2020, the court entered Mother's proposed order containing this Rule 78(c) language, adding a handwritten reference to "medical expenses dated 3/10/2020 (entered 3/12/2020)," which are not part of this appeal.
  - Two days later, Mother filed a notice of appeal, purporting to appeal from: (1) the May 2018 judgment awarding Father more than $59,000 in fees and costs; (2) the December 2019 minute entry denying Mother's Rule 85 motion; (3) the January 14, 2020 judgment awarding Father another $2,825 in fees; (4) the January 21, 2020 minute entry denying Mother's Rule 83 motion; and (5) the February 4, 2020 clarifying minute entries

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YEE V. YEE, 251 ARIZ. 71 (APP. 2021)

- ¶ 8 This court's appellate jurisdiction "is defined, and limited, by the Legislature." *Brumett v. MGA Home Healthcare, L.L.C.*, 240 Ariz. 420, 426 ¶ 4, 380 P.3d 659, 665 (App. 2016). Whether this court has appellate jurisdiction turns on compliance with (1) the applicable statute on which appellate ***654 *75** jurisdiction is based and (2) any applicable procedural rules.
- ¶9 A.R.S. § 12-2101, titled "Judgments and orders that may be appealed," specifies many types of orders over which this court has appellate jurisdiction. *Brumett*, 240 Ariz. at 425 ¶ 2, 380 P.3d at 654. Mother argues appellate jurisdiction is proper under § 12-2101(A)(1), which states that "[a]n appeal may be taken ... [f]rom a final judgment entered in an action ... commenced in a superior court." Relying on that statutory provision, Mother argues she could not appeal until the family court entered the April 2020 order containing the Rule 78(c) statement of finality. *See* Rule 78(c) ("A judgment as to all claims, issues, and parties is not final unless the judgment recites that no further matters remain pending and that the judgment is entered under Rule 78(c)."); *cf. Brumett*, 240 Ariz. at 426 ¶¶ 4–6, 380 P.3d at 655 (holding Ariz. R. Civ. P. (Civil Rule) 54(b) and (c), analogs to Rule 78(b) and (c), "define what constitutes an appealable 'final judgment' " under § 12-2101(A)(1)); Rule 1(c) ("If language in these rules is substantially the same as language in the civil rules, case law interpreting the language of the civil rules will apply to these rules.").

STATE BAR OF ARIZONA

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YEE V. YEE, 251 ARIZ. 71 (APP. 2021)

- ¶10 Mother's argument, however, does not account for the statute providing that a special order after entry of judgment is appealable without a certification of finality under Rule 78. Under A.R.S. § 12-2101(A)(2), this court has appellate jurisdiction over appeals "[f]rom any special order made after final judgment." *See Brumett*, 240 Ariz. at 426–27 ¶¶ 8–9, 380 P.3d at 665-66. To constitute such a "special order made after final judgment," an order (1) must involve different issues than "those that would arise from an appeal from the underlying judgment" and (2) must affect "the underlying judgment by enforcing it or staying its execution." *Arvizu v. Fernandez*, 183 Ariz. 224, 226–27, 902 P.2d 830, 832-33 (App. 1995); *accord In re the Marriage of Dorman*, 198 Ariz. 298, 300 ¶ 3, 9 P.3d 329, 331 (App. 2000) (quoting *Arvizu*). In family court, such a special order made after final judgment is appealable regardless of whether it includes a statement of finality. *Accord Brumett*, 240 Ariz. at 428–29 ¶ 15, 380 P.3d at 667-68 (construing Civil Rule 54(b) and (c)).[3]

STATE BAR OF ARIZONA

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YEE V. YEE, 251 ARIZ. 71 (APP. 2021)

- ¶13 More broadly, family court rulings that fully resolve post-decree petitions are appealable special orders entered after final judgment under A.R.S. § 12-2101(A)(2). *See, e.g.*, *Cone v. Righetti*, 73 Ariz. 271, 275, 240 P.2d 541 (1952) (post-decree order affecting custody and support of minor children); *Williams v. Williams*, 228 Ariz. 160, 165–66 ¶¶ 19–20, 264 P.3d 870, 875-76 (App. 2011) (post-decree order modifying spousal maintenance); *Sheehan v. Flower*, 217 Ariz. 39, 40 ¶ 8, 170 P.3d 288, 289 (App. 2007) (post-decree order on grandparent visitation); *Merrill v. Merrill*, 230 Ariz. 369, 371–72 ¶¶ 5–6, 284 P.3d 880, 882-83 (App. 2012) (post-decree order on military retirement benefits).[4]
- ¶14 But not every family court order addressing a post-decree motion or petition is appealable. Far from it. Although a special order made after final judgment in family court does not require a Rule 78 statement of finality to be appealable, the family court must have fully resolved all issues raised in a post-decree motion or petition before an appeal can be taken under A.R.S. § 12-2101(A)(2). *See Williams*, 228 Ariz. at 165–67 ¶¶ 20–29, 264 P.3d at 875-77 (citing, among others, *Dorman*, 198 Ariz. at 301 ¶ 4, 9 P.3d at 332 for the proposition that an order was appealable because it resolved all issues "raised in the petition," and *In re Estate of McGathy*, 226 Ariz. 277, 280 ¶ 17, 246 P.3d 628, 631 (2010) for the proposition "that an order completely resolving a particular [probate] petition is appealable notwithstanding the fact that the case may be ongoing," and noting the "court's reasoning in *McGathy* applies with just as much force to orders resolving post-decree petitions").[5]

YEE V. YEE, 251 ARIZ. 71 (APP. 2021)

- ¶19 As discussed above, the family court denied Mother's Rule 85 motion in a December 2019 minute entry. Mother then filed a Rule 83 motion to amend that minute entry. Rule 83, however, is limited to a motion to alter or amend a Rule 78(b) or (c) judgment. Indeed, a Rule 83 motion must be filed within 25 days "after the entry of judgment under Rule 78(b) or (c)." Rule 83(c)(1). This express language means that a Rule 83 motion challenging a post-decree order or any ruling other than a Rule 78(b) or (c) judgment is improper and can provide no basis for relief. As a result, the family court lacked the authority to grant Mother's self-styled Rule 83 motion, and this court will not review that ruling. *Cf. McHazlett v. Otis Eng'g Corp.*, 133 Ariz. 530, 533, 652 P.2d 1377, 1380 (1982) (if the superior court lacks "jurisdiction to issue an order[,] an appeal from that order gives the appellate court no jurisdiction except to dismiss the appeal.").

BLOS V. BLOS, 508 P.3D 790 (APP. 2022)

- **Blos**
  - Post Decree modification of parenting time
  - Final Order entered with ARFLP 78(c) language
  - Motion filed under ARFLP 83
  - Motion was denied
  - Appealed after Motion was denied
  - COA held that appeal was late and dismissed

STATE BAR OF ARIZONA

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BLOS V. BLOS, 508 P.3D 790 (APP. 2022)

- ¶6 Our jurisdiction is limited and defined by the legislature. *See* Brumett v. MGA Home Healthcare, L.L.C.A., 240 Ariz. 420, 426, ¶ 4, 380 P.3d 659, 665 (App. 2016). We have an independent duty to review and ensure that we have jurisdiction over an appeal and to dismiss an appeal when we lack jurisdiction. *Id*. at 425, ¶ 3, 380 P.3d at 664; *see also* In re Marriage of Johnson & Gravino, 231 Ariz. 228, 230, ¶ 5, 293 P.3d 504, 506 (App. 2012) ("[W]e have no authority to entertain an appeal over which we do not have jurisdiction.").
- ¶7 A timely appeal is "a prerequisite to appellate jurisdiction." *See* Ariz. Pest Control Comm'n v. Taylor, 223 Ariz. 486, 487, ¶ 3, 224 P.3d 983, 984 (App. 2010). A notice of appeal is timely if filed with the clerk of the family court "no later than thirty days after the entry of the judgment or order from which the appeal is taken." *See* Ariz. R. Civ. App. P. 8(a) & 9(a).

STATE BAR OF ARIZONA

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BLOS V. BLOS, 508 P.3D 790 (APP. 2022)

- ¶13 Michael and Gina also contend their appeals were timely because the family court certified their special orders as final under Rule 78(c). But no certification was required to appeal because a *special order* after final judgment is not a *final judgment* under Rules 78(b) or (c). *See* Yee, 251 Ariz. at ¶ 10, 484 P.3d at 654. Nor can the family court transform the nature of a special order into a final judgment by adding Rule 78 finality language. *See In re Marriage of Chapman*, 251 Ariz. 40, 43, ¶ 10, 484 P.3d 154, 157 (App. 2021) ("[T]he inclusion of Rule 78 language alone does not make a judgment final and appealable; the certification also must be substantively warranted.") (cleaned up).

…

- ¶15 Because a post-judgment special order is not a final judgment under Arizona Rules of Civil Appellate Procedure, the consolidated appeals are untimely and we lack jurisdiction. Accordingly, we dismiss both appeals.

TIME FOR FILING AN APPEAL

A notice of appeal must be filed "no later than 30 days after the entry of the judgment from which the appeal is taken." ARCAP 9(a). A judgment is "entered" when it is filed by the clerk. A notice of cross appeal must be filed "no later than 20 days after appellant's filing of a notice of appeal, or 30 days after entry of the judgment from which appeal is taken, whichever is later." ARCAP 9(b). A notice of appeal, therefore, can extend the time for filing a notice of cross appeal, but cannot shorten it.

HOW TO FILE AN APPEAL

A party to a superior court judgment filing a notice of appeal must:

(1) include the case caption and the superior court case number;

(2) identify the appellant(s);

(3) designate the judgment or portion thereof the party is appealing;

(4) identify the court to which the party is appealing; and

(5) be signed by the attorney representing the appellant, or by the appellant if unrepresented. ARCAP 8(c). The ARCAP appendix provides a form containing these elements, including if the appeal is from: (1) the entire judgment; (2) a part of the judgment; or (3) an order. See ARCAP Form 1.

STATE BAR OF ARIZONA

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FILING FEES

The appellant must pay a filing fee to the superior court clerk when the appellant files the notice of appeal. ARCAP 8(e).

The appellee must pay a filing fee if it files a cross-appeal. Id.

STATE BAR OF ARIZONA

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ORDERING TRANSCRIPTS

Within 10 days after a party files their notice of appeal, the appellant must:

(i) order from a certified court reporter any transcripts that "appellant deems necessary for proper consideration of the issues on appeal," ARCAP 11(c)(1);

(ii) submit an agreed-upon statement regarding the necessary oral proceedings, see ARCAP 11(e); or

(iii) move for leave to file an audio or video recording of the oral proceedings in lieu of filing a transcript, see ARCAP 11(f).

STATE BAR OF ARIZONA

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THE CASE MANAGEMENT STATEMENT

In Division One, the appellate clerk's initial notice to the parties gives 20 days for the appellant to file a case management statement, see ARCAP 12(d). This document provides the Court with information regarding critical dates, the basis for the appellate court's jurisdiction, and the issues the parties plan to appeal.

STATE BAR OF ARIZONA

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ELEMENTS OF THE OPENING BRIEF

The content requirements for opening briefs are provided in ARCAP 13(a). The opening brief must contain the following sections, in the following order, except that items (C) (introduction) and (J) (appendix) are optional:

A. "Tables of Contents." ARCAP 13(a)(1) provides that a brief must contain a table of contents with page references. If the brief is filed electronically, and if feasible, the table of contents should include bookmarks to the sections of the brief.

B. "Table of Citations." ARCAP 13(a)(2) provides that a brief must include a table of citations listing the cases, statutes, and other authorities cited in the brief in alphabetical order. The table must include references to the pages of the brief on which the citations appear.

STATE BAR OF ARIZONA

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OPENING BRIEF CONTINUED

C. "Introduction."

ARCAP 13(a)(3) allows a party to include a short introduction, although this is not necessary. This is helpful as you can help the Court understand what your issues will be.

D. "Statement of the Case."

ARCAP 13(a)(4) provides that the brief must include a statement of the case which concisely states the nature of the case, course of proceedings, disposition in the court below, and basis of the appellate court's jurisdiction, with appropriate references to the record. It should not be a statement of facts.

E. "Statement of Facts." ARCAP 13(a)(5) provides that a brief must contain a statement of facts that are relevant to the issues presented for review. You must cite to the record and this should not include legal argument. The Statement of Facts should be complete and must include all facts relied on in all arguments.

STATE BAR OF ARIZONA

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OPENING BRIEF CONTINUED

F. Statement of the Issues."

ARCAP 13(a)(6) provides that the brief must include a statement of the issues presented for review. The stated issue includes every subsidiary issue fairly comprised within the statement.

Be aware that arguments presented by appellants in the trial court are deemed to be waived or abandoned on appeal if not expressly presented in the appellate brief. See *Belen Loan Investors, L.L.C. v. Bradley*, 231 Ariz. 448, 457, ¶ 22 (App. 2012) (declining to address argument because "issues not clearly raised and argued in a party's appellate brief are waived"); *Sholes v. Fernando*, 228 Ariz. 455, 457 n.1, ¶ 1 (App. 2012) (court of appeals would not address sub-issues not argued or supported sufficiently in argument sections of appellants' brief).

G. "Argument"

ARCAP 13(a)(7) provides that a brief must include the appellant's argument, and further requires that the argument contain the contentions of the appellant with respect to the issues presented, supporting reasons for the contentions, citations of legal authorities, and appropriate references to the portions of the record on which the appellant relies. The Argument section must include a Standard of Review, Case Law Citations and developed legal argument.

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OPENING BRIEF; CONTINUED

H. "Notice Under Rule 21(a)."

If the party intends to claim attorney's fees on appeal, ARCAP 13(a)(8) provides that the brief must include a "notice under Rule 21(a)" as a separate section of their opening or answering brief. The request for attorney's fees now must be included in the opening or answering brief. It also must specifically state the statute, rule, decisional law, contract or other authority for an award of attorneys' fees, not merely cite Rule 21. Noncompliance with this requirement may be grounds for the court declining to award fees. See ARCAP 21(a)(2).; Chapter 11, Decision and PostDecision Proceedings in the Court of Appeals

I. "Conclusion."

ARCAP 13(a)(9) provides that a brief must contain a "short" conclusion which states the precise relief sought. Any requested alternative forms of relief should be stated clearly. For example, the conclusion should state whether the trial court judgment should be affirmed or reversed, whether any other specific relief should be granted, whether a new trial should be

ordered, and whether the appellate court should award attorneys' fees.

STATE BAR OF ARIZONA

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ANSWERING BRIEF

The appellee's answering brief must generally conform to the requirements for the appellant's opening brief. See ARCAP 13(b)(1). However, it is not required that the appellee include a statement of the case, statement of facts, or statement of the issues. There is nothing that prevents an Appellee from including these portions in their brief if they believe those portions of the appellant's opening brief insufficient or incorrect.

STATE BAR OF ARIZONA

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CROSS-APPEAL

If a cross-appeal has been filed, the appellee is required to combine its answering brief with its opening brief on cross-appeal. ARCAP 15(4).

This combined document must include a statement of issues presented in the cross-appeal. See ARCAP 13(g). The arguments pertaining to each issue should be separately and clearly briefed.

STATE BAR OF ARIZONA

30

REPLY

- The appellant may, but is not required to, filed a reply brief. However, it is almost always advisable to do so. If the appellant chooses to file a reply brief, it must be strictly limited to rebutting the answering brief. ARCAP 13(c).

STATE BAR OF ARIZONA

31

ORAL ARGUMENT

There is no right to oral argument; the grant of oral argument is discretionary. See ARCAP 18(a); R. Crim. P. 31.17(b).

A party would like to request oral argument, they must do so "no later than 10 days after the due date for the final reply brief, or no later than 10 days after the date the appellant or cross-appellant actually files the final reply brief, whichever is earlier." ARCAP 18(a); R. Crim. P. 31.17(a)(1).

Division one's website discourages motions to continue by setting a high standard:

Motions to continue oral argument from the scheduled date and time generally are granted only for true emergencies or unavoidable schedule conflicts. Scheduling conflicts with discovery matters or superior court proceedings ordinarily are not sufficient. Stipulations to continue oral arguments generally will not be accepted unless accompanied by a showing of sufficient cause.

32

SPECIAL ACTION JURISDICTION

The exercise of special action jurisdiction is appropriate if a case raises issues of first impression, involves purely legal questions of public importance, or involves issues that are likely to arise again. See *Martin v. Reinstein,* 195 Ariz. 293, 300 (App. 1999). Furthermore, the Court of Appeals will generally accept special action jurisdiction "only in those cases in which 'justice cannot be satisfactorily obtained by other means.'" Id.

"[Special action] jurisdiction is frequently accepted when under no rule of law can a trial court's actions be justified." See *King v. Super. Ct. (Bauer)*, 138 Ariz. 147, 149-50 (1983); *State v. Bernini*, 230 Ariz. 223, 225, ¶ 6 (App. 2012) ("Special action relief is appropriate if the respondent judge has abused her discretion by committing an error of law or proceeding in excess of her legal authority."); *Amos v. Bowen*, 143 Ariz. 324, 327 (App. 1984) ("Special action jurisdiction may be assumed to correct a plain and obvious error committed by the trial court.").

LEGISLATIVE UPDATES

Kristi Reardon
Berkshire Law Office
Erica Leavitt
Schmillen Law Firm

1

RULE 9: DUTIES OF PARTIES OR COUNSEL

(a)-(b) [No change]

(c) Good Faith Consultation Certificate.

(1) [No change]

(2) Domestic Violence. ~~If there is a current court order prohibiting contact between the parties, or a history of domestic violence between parties, t~~The parties are not required to personally meet or contact each other if:.

(A) there is a current court order prohibiting contact between the parties, a history of domestic violence between the parties, or an allegation of domestic violence; and

(B) the alleged victim of the domestic violence is self-represented.

(d)-(e) [No change]

https://www.azcourts.gov/Portals/20/2022%20Rules/R-21-0050%20Final%20Rules%20Order.PDF?ver=A3TQYMSMf8suV1cWvck84A%3d%3d

2

RULE 34: CONTINUANCES AND SCHEDULING CONFLICTS

(a)-(b) [No change]

(c) Duty to Consult. Before filing a motion to continue a trial, hearing, or conference, the moving party must consult with other parties in the case and advise the court whether the other parties object to the motion. This requirement does not apply if: ~~when there is a protective order in the case or a history of domestic violence between the parties.~~

(1) there is a current court order prohibiting contact between the parties, a history of domestic violence between the parties, or an allegation of domestic violence; and

(2) the alleged victim of the domestic violence is self-represented.

https://www.azcourts.gov/Portals/20/2022%20Rules/R-21-0050%20Final%20Rules%20Order.PDF?ver=A3TQYMSMf8suV1cWvck84A%3d%3d

3

RULE 76. RESOLUTION MANAGEMENT CONFERENCE

(a) [No change]

(b) Meet-and-Confer and Other Party Duties.

(1) Generally. Not less than 5 days before the RMC, the parties must:

(A) confer to resolve as many issues as possible. This requirement does not apply if: ~~a court order prohibits contact between the parties, or they have a history of domestic violence. However, in such situations counsel still must take all reasonable steps to resolve as many issues as possible; and~~

(B) [No change] (i) there is a current court order prohibiting contact between the parties, a history of domestic violence between the parties, or an allegation of domestic violence; and

(ii) the alleged victim of the domestic violence is self-represented; and

(2) [No change]

(c)-(d) [No change]

https://www.azcourts.gov/Portals/20/2022%20Rules/R-21-0050%20Final%20Rules%20Order.PDF?ver=A3TQYMSMf8suV1cWvck84A%3d%3d

4

RULE 78. JUDGMENT, ATTORNEY FEES, COSTS, AND EXPENSES

(a) Definitions; Form.

(1) "Judgment" as used in these rules ~~includes a decree or an order from which an appeal lies.~~ is a decree of dissolution of marriage, a decree of legal separation, a decree of dissolution of a covenant marriage, a decree of legal separation of a covenant marriage, a decree of annulment, judgments of paternity and maternity, and a decision defining or modifying legal decision-making, parenting time, or child support. A decision resolving any petition listed in Rule 23(a) or any post-judgment petition filed under Rule 91(b) is a judgment. A temporary order is not a judgment.

(2) [No change]

5

RULE 78: CONTINUED

(b) Judgment upon Multiple Claims or Involving Multiple Parties. When more than one claim for relief is presented in an action, whether as a claim, counterclaim, or third-party claim, or ~~when multiple parties are involved~~ petition to modify or enforce a judgment, the court may direct the entry of ~~a final~~ an appealable judgment as to one or more, but fewer than all, claims or parties only if the court expressly determines there is no just reason for delay and recites that the judgment is entered under Rule 78(b). If there is no such express determination and recital, any decision, however designated, that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties does not end the action as to any of the claims or parties, and is subject to revision at any time before the entry of a judgment adjudicating all the claims and all the parties' rights and liabilities. For purposes of this section, a claim for attorney fees is considered a separate claim from the related judgment regarding the merits of the action.

(c) Judgment as to All Claims, Issues, and Parties. A judgment as to all claims, issues, and parties is not ~~final~~ appealable unless the judgment recites that no further matters remain pending and that the judgment is entered under Rule 78(c).

(d) [No change]

6

RULE 78: CONTINUED

(e) Attorney Fees, Costs, and Expenses.

(1) Asserting a Claim for Attorney Fees, Costs, and Expenses. A claim for attorney fees, costs, and expenses must be made in the pleadings or by motion filed before trial or a ~~post-decree~~ post-judgment evidentiary hearing. A claim for attorney fees, costs, and expenses must also be included in any required pretrial statement. A claim for attorney fees, costs and expenses not made in compliance with this subpart is waived absent good cause shown.

(2) [No change]

(3) Time of Determination. The determination of attorney fees, costs, and expenses must be included in the judgment or as otherwise ordered by the court. If a party asserts a claim for attorney fees, costs, and expenses under subpart (e)(1), and a judgment is entered under this rule that omits a ruling on the claim, the claim is deemed denied unless the party files a timely Rule 83 motion within 15 days after entry of the judgment.

(f)-(i) [No change]

https://www.azcourts.gov/Portals/20/2022%20Rules/R-22-0005%20Final%20Rules%20Order.PDF?ver=kpkeGWnaprLmRIRrADUeLg%3d%3d

7

RULE 85. RELIEF FROM JUDGMENT ~~OR ORDER~~

(a) Corrections Based on Clerical Mistakes; Oversights and Omissions. A court must correct a clerical mistake or a mistake arising from oversight or omission if one is found in a judgment, ~~order, or other part of the record~~. The court may do so on motion or on its own, with notice. But after an appeal has been filed and while it is pending in the appellate court, such a mistake may be corrected only with the appellate court's leave. After a mistake in the judgment is corrected, execution must conform to the corrected judgment.

(b) (b) Grounds for Relief from a Final Judgment, ~~Order, or Proceeding~~. On motion and on such terms as are just, the court may relieve a party or its legal representative from a final judgment, ~~order, or proceeding~~ for the following reasons:

(c) (1)-(6) [No change]

8

RULE 85: CONTINUED

(c) Timing and Effect of the Motion.

(1) Timing. A motion under section (b) must be made within a reasonable time— and for the reasons set forth in subparts (b)(1), (2), and (3), no more than 6 months after the entry of the judgment ~~or order or date of the proceeding, whichever is later.~~ This deadline may not be extended by stipulation or court order, except as allowed by Rule 4(b)(2).

(2) Effect on Finality and Appealability. The motion does not affect the judgment's finality or appealability or suspend its operation. Timely filing a motion may affect the time in which to file an appeal of the judgment as provided in ARCAP 9(e)(1)(E).

(d) Other Powers to Grant Relief. This rule does not limit the court's power to:

(1) entertain an independent action to relieve a party from a judgment, ~~order, or proceeding;~~

(2)-(3) [No change]

(e) [No change]

https://www.azcourts.gov/Portals/20/2022%20Rules/R-22-0005%20Final%20Rules%20Order.PDF?ver=kpkeGWnaprLmRIRrADUeLg%3d%3d

9

RULE 91. MODIFICATION OR ENFORCEMENT OF JUDGMENT

(a) Definitions.

(1) Judgment. When used in this rule and in Rules 91.1 through 91.7, "judgment" ~~includes a decree of dissolution of marriage, a decree of legal separation, a decree of dissolution of a covenant marriage, a decree of legal separation of a covenant marriage, a decree of annulment, judgments of paternity and maternity, and orders defining legal decision-making, parenting time, or child support.~~ is as defined in Rule 78(a)(1).

(2)-(3) [No change]

(b)-(p) [No change]

https://www.azcourts.gov/Portals/20/2022%20Rules/R-22-0005%20Final%20Rules%20Order.PDF?ver=kpkeGWnaprLmRIRrADUeLg%3d%3d

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RULE 14. WRITTEN VERIFICATIONS AND UNSWORN DECLARATIONS UNDER PENALTY OF PERJURY

(a) [No change]

(b) Alternative Verification. For those documents that require a verification under Rule 14(a), courts may accept for filing any of the documents without notarization if they are accompanied by a photocopy of the filer's driver license or other government-issued identification document. The applicant must redact a protected address and any sensitive data as defined by Rule 43.1(f)(1) from a driver license or other government-issued identification document. The clerk may maintain the photocopy of the license or other government-issued identification document as a confidential record and limit its availability as provided in Rule 43.1(f)(2)(B)(ii). If the alternative verification is attached to the document containing the signature, the Clerk must not maintain the document as a confidential record and must not limit its availability. A party filing a document with alternative verification attached must redact all sensitive data before filing, consistent with Rule 43.1(f)(2)(A).

(~~b~~c) Unsworn Declarations Under Penalty of Perjury. Except as provided in ~~section~~ Rule 14(a)–(b) ~~of this rule~~, when these rules require a verification, the requirement is satisfied if the declaration is signed by the person and is substantially in the following form:

"I declare under penalty of perjury that the foregoing is true and correct. Dated: _____ Signature: _____".

https://www.azcourts.gov/Portals/20/2022%20Rules/R-22-0006%20Final%20Rules%20Order.PDF?ver=nyn936RsKBMPMu9h40VG6A%3d%3d

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RULE 76. RESOLUTION MANAGEMENT CONFERENCE

(a) [No change]

(b) Meet-and-Confer and Other Party Duties.

(1) Generally. Not less than 5 days before the RMC, the parties must:

(A) [No change]

(B) each prepare and file a written resolution statement setting forth any agreements ~~reached by the parties. Each party must file a separate position statement setting forth~~ between the parties and a specific, detailed position that the party proposes to resolve the party's position on all disputed issues in the case. without argument in support of the position.

(2) [No change]

(c)-(d) [No change]

https://www.azcourts.gov/Portals/20/2022%20Rules/R-22-0010%20Final%20Rules%20Order.PDF?ver=o7RzkTDCawbqIvJ1zEUEIg%3d%3d

12

RULE 76.1. SCHEDULING CONFERENCE; SCHEDULING STATEMENT; NOTICE OF ISSUES; PRETRIAL STATEMENT.

(a) [No change]

(b) Timing. Unless the court orders otherwise, the parties must file:

(1) a scheduling statement 20 days before the date set for a scheduling conference, if one is set; ~~and~~

(2) a notice of issues under Rule 76.1(f) 20 days before a trial; and

~~(2)~~(3) a pretrial statement ~~20~~ 5 days before a trial.

(c) Joint and Separate Statements. Unless the court orders otherwise, the parties may file joint or separate statements. If preparing a joint statement, the party who initiated the action set for hearing must take the lead to prepare a draft joint statement and must communicate with every other party concerning the statement. as outlined below:

(1) the party who initiated the action set for hearing must provide their outline for the pretrial statement to the opposing party 15 calendar days before the trial.

(2) then, 8 business days or more before the hearing, the parties must exchange their respective portions so that the positions can be merged.

(3) the pretrial statement will be reviewed by both parties and filed no less than 5 business days before the hearing date.

Every statement must be signed by each party or counsel. However, if the parties are self-represented and there is a history of domestic violence, the parties must file separate statements.

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RULE 76.1: CONTINUED

(d) The parties may use the form of statement provided in Form 16, Rule 97. Each statement must include the information required in section (e) or ~~(f)~~(g), as applicable.

(e) Scheduling Statement. [No change in "scheduling statement" text]

(f) Notice of Issues. The Notice of Issues must be substantially similar to the form set forth in Form 18, Rule 97. The Notice of Issues must contain a complete list of all remaining contested issues the filing party intends to present at the trial. Issues not raised previously cannot be raised for the first time in the Notice of Issues. Each party must file a separate Notice of Issues. Issues listed in the Notice of Issues are listed generally; specificity is reserved for the Pretrial Statement after the parties and/or their counsel (if represented) have met and conferred to narrow or resolve the contested issues before the generation and submission of the Pretrial Statement. Neither party is required to file a Notice of Issues before a temporary orders hearing or other interim hearing.

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RULE 76.1: CONTINUED

~~(f)~~(g) [No change in text]

~~(g)~~(h) [No change in text]

~~(h)~~(i) Failure to List. A party may not present a witness or offer an exhibit during trial other than those listed and exchanged in a statement submitted before the scheduling conference or trial, unless the court orders otherwise for good cause. A party waives the right to raise an objection at the trial or hearing if the specific objection to a witness, exhibit, or claim is not raised in the statement submitted pursuant to section ~~(f)~~(g) of this rule. A party may not present an issue not listed in either party's Notice of Issues at trial, unless the court orders otherwise for good cause.

https://www.azcourts.gov/Portals/20/2022%20Rules/R-22-0015%20Final%20Rules%20Order.PDF?ver=F2n69ZFHYLzhA7NTRgqYfw%3d%3d

15

RULE 45.1. SUMMARY CONSENT DECREE

(a) Generally. If the parties reach a comprehensive settlement on all issues before either party has petitioned for dissolution of marriage or legal separation, they may file a summary consent petition and response and pay the appropriate fees. This rule does not apply to petitions in paternity, maternity, or third-party matters.

(b) Summary Consent Petition and Response. The summary consent petition and response must be a single document captioned as "Summary Consent Petition and Response" and include:

(1) the birth date, occupation, and address of each party and the length of each party's domicile in Arizona;

(2) the date of the parties' marriage, where it was performed, and whether it is a covenant marriage;

(3) the names, birth dates, and addresses of all living children (natural or adopted) common to the parties and whether a party is pregnant;

(4) a statement of the grounds for the court's jurisdiction;

(5) a statement that formal service of process is waived;

(6) a statement, in the case of marriage dissolution, that the marriage is irretrievably broken, or, in the case of legal separation, that the marriage is irretrievably broken or that both parties desire to live separate and apart;

(7) a statement that the parties have resolved all issues about their dissolution or separation;

(8) a request that the court enter a decree of dissolution or legal separation and a statement of the relief the parties jointly seek; and

(9) both parties' signatures.

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RULE 45.1; CONTINUED

(c) Preliminary Injunction. Notwithstanding the requirements of Rule 25(a), when filing a summary consent petition and response, the parties must present two copies of a preliminary injunction to the clerk to issue under A.R.S. § 25-315(A). The clerk will issue the injunctions and return copies to the parties. (d) Entry of a Summary Consent Decree. (1) Agreements and Proposed Decree. Upon filing the summary consent petition and response, or at any time no later than 60 days after the filing date, the parties must submit to the court all required final settlement documents, including their written agreements and the proposed decree.

(2) Content of the Proposed Decree. The proposed decree's content must meet the requirements of Rule 45(b). If children are involved, the proposed decree's content must also meet the requirements of Rule 45(c).

(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.

(4) Notice of Intent to Withdraw. Before the summary consent decree is entered, either party may request to withdraw from the agreement. If the court allows a party to withdraw, the case will continue as a dissolution or separation proceeding upon paying the additional required fees and filing the appropriate pleadings under Rule 23. The court must dismiss the case if the parties jointly withdraw from the summary consent decree agreement.

https://www.azcourts.gov/Portals/20/2022%20Rules/R-22-0031%20Order%20Re%20Emergency%20Adoption.PDF?ver=aBbA1Lt1Ito-Bm35mwtkDA%3d%3d

17

RULE 78.1. STIPULATED ORDER TERMINATING A DECREE OF LEGAL SEPARATION

(a) Generally. If a legal separation decree has not been converted into a decree of dissolution, then at any time after the decree's entry, the parties may stipulate that the court may enter an order terminating the legal separation decree.

(b) Case Number. The stipulation, order, and related documents must be filed under the same case number as the legal separation action.

(c) Stipulation. The parties' stipulation must meet the requirements of Rule 69, and each party must personally sign the stipulation. The stipulation must include the following terms:

(1) Both parties agree to terminate the legal separation, that they desire to restore their status to legally married, and that they do so intelligently, voluntarily, and without duress, coercion, or undue influence.

(2) (2) The parties acknowledge that on entry of the stipulated order terminating the decree of legal separation, the marital community will be reformed as if the parties married on the date of the termination order, and the legal separation no longer exists.

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RULE 78.1; CONTINUED

(3) The parties acknowledge that any property or debt awarded to either party as separate property or debt under the legal separation decree remains separate. The parties also acknowledge that any property acquired or debts incurred from the entry of the legal separation decree through the termination date remains the separate property of the acquiring party and the separate debt of the incurring party.

(4) The parties acknowledge that any property payments due from one party to the other under the legal separation decree are waived unless otherwise specified in the termination order.

(5) The parties acknowledge that any parenting orders entered in the legal separation decree under Chapter 4 of Title 25 of the Arizona Revised Statutes no longer apply.

(6) The parties acknowledge that any provisions for child support or spousal maintenance entered in the legal separation decree no longer apply, except for any sum owed to the State under A.R.S. § 46-407. Also, unless otherwise agreed, each party waives any claim for amounts that remain due while the support provisions under the legal separation decree were in effect.

(7) The parties acknowledge that the termination order does not impact the rights of creditors that may have relied on the terms of the legal separation decree.

(d) Order. A proposed order must accompany the stipulation. The order must incorporate the terms of the parties' stipulation. The court must file the order after a judicial officer approves and signs it.

https://www.azcourts.gov/Portals/20/2022%20Rules/R-22-0031%20Order%20Re%20Emergency%20Adoption.PDF?ver=aBbA1Lt1Ito-Bm35mwtkDA%3d%3d

19

PROPOSED RULE CHANGES

A petition for rule change proposed by the Family Court Improvement Committee has been pending before the Arizona Supreme Court regarding the timing for court rulings. After considering the comments submitted to the rule petition, the Family Court Improvement Committee filed its reply and is making the following recommendations for amendments to the Arizona Rules of Family Law Procedure (ARFLP):

Rule 30, ARFLP- In its latest proposed version, this rule would read as follows: "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 procedural rule."

20

PROPOSED RULE CHANGES

Rule 43.1(e)(5), ARFLP- Stipulated Orders- When the parties submit a stipulated order, the court "must rule on any written stipulation within twenty-one days of the stipulation being filed with a notice of lodging and the proposed order included as an attachment."

Rule 44.1, ARFLP- Default Decrees WITHOUT hearing- For default decrees that precisely track the provisions in the petition and therefore do not require a hearing, the proposed rule change provides: "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 this rule. The court must rule on the motion within twenty-one days of the lodging date."

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PROPOSED RULE CHANGES

Rule 45- Consent Decrees- When submitting a Consent Decree, the parties will be required to submit a notice of lodging that would accompany the Consent Decree. Thereafter, the court is required to "rule on the lodged consent decree within twenty-one days of the lodging date."

Rules 47, 47.2 and 48- Temporary Orders- For pre and post-decree temporary orders, these rules would be amended to require that the court rule within 21 days of the conclusion of the hearing.

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PROPOSED RULE CHANGES

Rule 47.1- Simplified Child Support Modification- This rule would be amended to require that the court rule within 21 days of the conclusion of the hearing.

Rule 95.1- Enforcement of Parenting Orders- This rule would be amended to align with ARS Section 25-414 and require that the court rule within 21 days of the conclusion of the hearing.

The Arizona Supreme Court will be considering these rule changes at either its June or August meeting and, if adopted, the rule changes would likely go into effect as of January 1, 2024.

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CASELAW UPDATES

Kristi Reardon
Berkshire Law Office
Erica Leavitt
Schmillen Law Firm

1

IN RE MARRIAGE OF QUIJADA & DOMINGUEZ

How does a party's immigration status affect that party's ability to satisfy the domicile requirement of A.R.S. § 25-312, when the party entered the United States on a nonimmigrant visa but began seeking legal permanent residency before filing a petition for dissolution?

2

QUIJADA & DOMINGUEZ

The parties originally entered the United States on visas prohibiting them from intending to establish residency. Dominguez then moved to Virginia.

Dominguez filed for dissolution in Mexico in November 2020. Quijada challenged the Mexican court's jurisdiction on the ground that the parties' marital residence was in Arizona rather than Mexico. The Mexican court declined jurisdiction.

Quijada filed the dissolution petition in Arizona. In response, Dominguez filed a motion to dismiss for lack of subject matter jurisdiction. He argued that Quijada's immigration status precluded her from being domiciled in Arizona.

The trial court concluded that people who enter the United States on a TN or TD visa lack the legal capacity to intend to abandon their former domicile and remain indefinitely in Arizona.

QUIJADA & DOMINGUEZ

- Federal law governing TN and TD visas does not preempt a conclusion that holders of such visas can be domiciled in Arizona as a matter of state law while seeking an immigrant visa or permanent residency.

- The relevant federal law looks to the visa holder's intent upon admission to the United States and renewal of the visa. Nothing in that law precludes visa holders from entering the United States without an intent to remain, then changing that intent and seeking an immigrant visa or permanent residency later.

QUIJADA & DOMINGUEZ

- Arizona courts would not impede Congress's purposes and objectives by allowing holders of TN and TD visas to establish Arizona domicile where they have begun seeking an immigrant visa or adjustment of status. Similarly, allowing these visa holders to establish an Arizona domicile after invoking these processes would not add to or take from the conditions lawfully imposed by Congress. Congress contemplated that these visa holders might be able to establish a United States domicile by following these processes.
- For an Arizona court to exercise jurisdiction of this dissolution proceeding would neither alter Quijada's immigration status nor limit the remedies available under federal immigration law.
- Federal law does not preempt Arizona from allowing Quijada to establish domicile under Arizona law. Absent federal preemption, Arizona is free to make and apply its own laws.

IN RE MARRIAGE OF ROJAS

Did the trial court err in concluding that the parties' marital settlement agreement merged into the decree of dissolution in its entirety?

If so, did the Residence Clause of the marital settlement agreement merge into the decree of dissolution?

If the Residence Clause did not merge into the decree of dissolution, did the trial court err in granting the wife's post-decree enforcement petition?

IN RE MARRIAGE OF ROJAS

- After Juan filed a petition for dissolution of marriage in January 2005, the parties signed a marital settlement agreement (MSA).
- The MSA addressed matters including child support, child custody, future tax filings, and division of property and debts. In the provision referred to as the "Residence Clause," the parties agreed:

[Juan] shall be allowed to remain in the family residence … and have exclusive use thereof until he decides to sell the residence. The parties shall hold the title jointly (as presently titled). If [Juan] decides to sell the residence then the equity will be either divided equally between [Michele] and [Juan], or distributed equally between the parties' three children after all costs and fees have been paid for the sale of the home. If the parties are unable to agree on the distribution then it shall be distributed equally between [Michele] and [Juan] so that each may make his/her own distribution decision.

IN RE MARRIAGE OF ROJAS

- In 2006, the parties stipulated to the entry of a draft decree of dissolution submitted by Juan's counsel, which Michele's counsel had approved as to "form and content." The dissolution court2 signed the decree as submitted, finding that the MSA was "fair and just" and ordering:

That the … [MSA] entered into by and between the parties hereto is hereby approved, confirmed and ratified by the Court and is incorporated and merged into this Decree, except such provisions as are recited therein which are contractual in nature, as if the same were set forth in full, and the parties are ORDERED to carry out and abide by all of the provisions contained therein.

- Following the dissolution, Juan continued to live in the family home for several years, but he ultimately sold it in April 2021. As part of the sale, Juan and Michele signed closing documents including a disclosure, warranty deed, and a proceeds-allocation form. According to the proceeds-allocation form, the full amount of the proceeds from the sale went to Juan.
- Michele then filed a petition to enforce the decree alleging that Juan had sold the home but wrongfully received all sale proceeds. She sought one half of the proceeds under the Residence Clause.

IN RE MARRIAGE OF ROJAS

The trial court determined that "the plain reading of the decree and the MSA" expressed an intent by the parties to "incorporate and merge" the entire MSA, including the Residence Clause, into the decree. It further determined that, because the Residence Clause merged into the decree with the rest of the MSA, it could not consider "the 2020 and 2021 discussions and negotiations between the parties to alter or clarify the plain language of the 2006 decree." If any such post-decree agreement did exist, it stated, any violation "would be enforceable, if at all, as a breach of contract separate and apart from the dissolution decree." Accordingly, the court enforced the Residence Clause according to its original terms, ordering Juan to pay Michele half of the proceeds from the sale of the home.

IN RE MARRIAGE OF ROJAS

The financial terms of an MSA are binding on the trial court "unless it finds … that the separation agreement is unfair." § 25- 317(B). If the court finds the MSA's provisions on property division and maintenance are "not unfair" then one of two things will occur: (1) the MSA "shall be set forth or incorporated by reference" in the decree "and the parties shall be ordered to perform them" or (2) if the MSA "provides that its terms shall not be set forth in the decree," the decree must identify the MSA "as incorporated by reference" and state the court "found the terms as to property disposition and maintenance not unfair and the terms as to support, legal decision-making and parenting time of children reasonable." § 25-317(D).

IN RE MARRIAGE OF ROJAS

When an MSA is "set forth or incorporated by reference in" the decree, it is "merger." If merged, the MSA or provisions of the MSA are "superseded by the decree, and the obligations imposed are not those imposed by contract, but are those imposed by decree, and enforceable as such"— "the value attaching to the separation agreement is only historical." LaPrade, 189 Ariz. at 247, 941 P.2d at 1272 (quoting Glassford v. Glassford, 76 Ariz. 220, 226, 262 P.2d 382 (1953)).

The MSA as a whole or the merged provisions "are enforceable by all remedies available for enforcement of a judgment, including contempt." § 25-317(E). Such provisions become part of the decree itself and, except for matters of support and custody, may not be modified once the decree is entered. § 25-317(F). The parties may not freely agree to modify a dissolution decree as they would a contract, but rather they must do so with court action and under the limited circumstances allowed by law. Id.; A.R.S. § 25-327(A).

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IN RE MARRIAGE OF ROJAS

When an MSA is "not ... set forth" in a decree but merely "incorporated by reference," it is "incorporation by reference." LaPrade, 189 Ariz. at 247 & n.1, 941 P.2d at 1272 (emphasis added) (quoting § 25-317(D)); Young, 142 Ariz. at 418-19, 690 P.2d at 137–38. When merely incorporated by reference, "the agreement retains its independent contractual status and is subject to the rights and limitations of contract law." LaPrade, 189 Ariz. at 247, 941 P.2d at 1272. "[T]he purpose of the incorporation by the court into the judgment will be only to identify the agreement so as to render its validity res judicata in any subsequent action based upon it." Ruhsam v. Ruhsam, 110 Ariz. 426, 426, 520 P.2d 298, 298 (1974). Such an MSA (or its provisions) are not enforceable as an element of a judgment or decree as under § 25-317(E), but can only be enforced by "a separate action on the contract, by obtaining a judgment thereon and then enforcing it as any other civil judgment." Helber v. Frazelle, 118 Ariz. 217, 219, 575 P.2d 1243, 1245 (1978).

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IN RE MARRIAGE OF ROJAS

- The court looks initially to the language of the agreement and the decree. An agreement does not merge when the language used by the parties and the court indicates an intention that a provision retain "independent contractual status."
- Here, the Decree stated that the MSA is "incorporated and merged, except such provisions as are recited therein which are contractual in nature, as if the same were set forth in full."
- The Contract Clause of the MSA similarly states that if the parties divorce, "this agreement and its provisions, upon approval of the court, shall be included in said Decree of Dissolution of Marriage as provided for in A.R.S. § 25-317," and "[t]he terms of this agreement, except such provisions as are contractual in nature, shall be made a part of, incorporated in and merged into said decree."

IN RE MARRIAGE OF ROJAS

Due to the lack of merger, the trial court erred by exercising jurisdiction over Michele's independent contractual claims under the Residence Clause, and Michele must bring her claim to enforce the Residence Clause by a separate contract action. The enforcement petition should have been dismissed.

IN RE MARRIAGE OF MORRIS & MANDEL

Whether the trial court had jurisdiction to enter final legal decision-making and parenting-time orders when both parents and the minor child had left Arizona during the divorce proceeding.

Whether the trial court correctly awarded joint legal decision-making after finding that one parent had a significant history of domestic violence.

Whether the trial court correctly applied the statutory framework involving domestic violence in awarding parenting time.

Whether the trial court correctly attributed parenting time to one parent for child support purposes because of the physical distance between that parent and the child, as well as the financial burdens associated with parenting time.

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IN RE MARRIAGE OF MORRIS & MANDEL

- The trial court ordered Mother and Father to share joint legal decision-making of their child.
- Mother asserted that Father had engaged in a significant history of domestic violence against her.
- The domestic violence allegations arose in part from an incident that led to Father pleading guilty to criminal charges. Mother also obtained orders of protection against Father, both affirmed after hearings.
- In its ruling, the court incorporated its temporary orders finding that Father had engaged in a significant history of domestic violence.
- It awarded the parties joint legal-decision making and entered a parenting plan designating Mother as the primary residential parent, with Father having parenting time that would increase once the child began kindergarten.

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IN RE MARRIAGE OF MORRIS & MANDEL

Jurisdictional Issues:

Determining whether the trial court had authority to enter the final orders requires the court to first address whether it had authority to make an "initial" child custody determination. A court has such authority if Arizona was "the home state of the child on the date of the commencement of the proceeding." § 25-1031(A)(1). Here, when the proceedings commenced, Arizona was the child's home state, as he lived here from his birth until the proceedings commenced. Thus, the court had jurisdiction to make an initial determination.

The initial determination came happened at temporary orders. Subsequently, the parties and child left Arizona. However, the court did not lose jurisdiction. Rather, a court has jurisdiction to modify its initial determination "if it has jurisdiction to make an initial determination under § 25-1031." § 25-1032(B).

IN RE MARRIAGE OF MORRIS & MANDEL

Legal Decision-Making Authority

- After concluding that Father had a significant history of domestic violence, the court erred by undertaking the analysis that applies when a parent has committed domestic violence that is not "significant."
- Under § 25-403.03(A), the court was precluded from ordering joint legal decision-making. Subsection (D)'s rebuttable presumption did not apply.

IN RE MARRIAGE OF MORRIS & MANDEL

Parenting Time

- Mother appealed the parenting time order as well, arguing it was error due to the finding of a significant history of domestic violence.

The COA held:

Unlike with legal decision-making, our statutory scheme does not prohibit parenting time for a parent who has engaged in "significant domestic violence" or a "significant history of domestic violence." Rather, parents who have committed domestic violence—"significant" or otherwise—must "prov[e] to the court's satisfaction that parenting time will not endanger the child or significantly impair the child's emotional development." A.R.S. § 25-403.03(F).

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IN RE MARRIAGE OF MORRIS & MANDEL

- The trial court ordered that until the child began kindergarten, Father would exercise parenting time for two continuous weeks at the end of each calendar quarter. Once kindergarten began, Father's parenting time would increase to eight weeks in the summer, plus half of Christmas break and one week at spring break. In addition, the court allowed him up to one week of parenting time per month in Mother's state of residence.
- Mother argued that this arrangement improperly increased Father's parenting time once the child started kindergarten.
- COA: The court reasonably recognized that as children enter school, parenting-time arrangements must account for school schedules. The two-weeks-per-quarter arrangement for pre-kindergarten years would not work with most school calendars. As a result, the court crafted a schedule that would comply. The increase comports with the public policy that absent evidence to the contrary, it is in a child's best interests to have "substantial, frequent, meaningful and continuing parenting time with both parents." A.R.S. § 25-103(B)(1).

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IN RE MARRIAGE OF MORRIS & MANDEL

Child Support

- In calculating past child support, the court treated it as if the parties had equal parenting time through the proceedings, although Father had exercised little time. The court reasoned that it was "appropriate to attribute equal parenting time based on Father's inability to exercise parenting time with the minor child internationally, or without a tremendous financial burden."

COA:

Application of the child-support guidelines is mandatory. Under the guidelines, trial courts must calculate parenting time based on either a "court order, a parenting plan, by the parents' expectation, or by historical practice." A.R.S. § 25-320 app. § V(C).

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IN RE MARRIAGE OF MORRIS & MANDEL

- The trial court did not calculate parenting time based on "court order, a parenting plan, by the parents' expectation, or by historical practice," as required by § 25-320 app. § V(C). It instead considered a different factor- Father's inability to exercise parenting time given the distance between the parties.
- The court erred in calculating parenting time in this manner, as it is unsupported by the statute or guidelines.
- The child-support guidelines provide that a deviation may be warranted where the parenting plan "will require a parent to incur significant travel expenses related to parenting time and the cost thereof in combination with child support may impede the parent's ability to exercise parenting time." § 25-320 app. § IX(D)(4). The court concluded, however, that "[n]o evidence was presented to support a deviation." It also did not follow the procedure for a deviation, which includes making findings and incorporating child-support worksheets showing the deviation.

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PHILLIPS V. HON SCHWARTZ/PHILLIPS

Whether the superior court erred in staying a dissolution of covenant marriage proceeding under A.R.S. § 25-903(5) (listing grounds for dissolution, including living separately for at least two years), when that specific ground was not alleged in the petition for dissolution.

Whether the superior court erred by rejecting, as part of a temporary orders hearing, the substantive grounds petitioner had alleged for dissolving her covenant marriage.

PHILLIPS V. HON SCHWARTZ/PHILLIPS

- The parties had a covenant marriage under § 25-901.
- The mother petitioned for dissolution, alleging Father had been emotionally and physically abusive toward her and the children, and he "consistently abused alcohol" during the marriage.
- She sought sole legal decision-making authority, with supervised parenting time for Father, and asked that all marital assets and obligations be divided equitably.

PHILLIPS V. HON SCHWARTZ/PHILLIPS

The trial court found:

- there was evidence of a tumultuous marriage but found that Mother had exaggerated, or perhaps misrepresented, some facts;
- there was insufficient "evidence of physical, verbal, mental, or emotional abuse, domestic violence, substance abuse, or parental fitness issues" and concluded that none of the circumstances in § 25-903 existed.
- The evidence might not yet have been "fully developed."

The court stayed the proceedings under § 25-903(5), the two-year ground, reasoning that because it found no other grounds had been proven, the case could only proceed under this ground, and that a stay was required because the requisite time had not passed.

PHILLIPS V. HON SCHWARTZ/PHILLIPS

- A party seeking dissolution of a covenant marriage must include, in a verified petition, "any of the grounds prescribed in § 25-903." A.R.S. § 25-314(A). Also, § 25-903(5) unambiguously provides that "[a] party may file a petition" alleging that ground. Mother alleged several grounds for dissolution, but she did not allege § 25-903(5), implicitly indicating that ground was not applicable or appropriate for her petition. Nor did Mother include any reference to § 25-903(5) or a stay in her request for temporary orders. Instead, the issues she raised were legal decision-making, parenting time, child support, and the use of the marital residence. Because Mother did not seek dissolution under § 25-903(5), the superior court erred when it found that none of the circumstances in § 25-903(1)–(8) existed and then issued a stay based on § 25-903(5) even though Mother had not alleged that ground in her petition.
- The court's decision to stay all proceedings in this dissolution also conflicts with the limited scope and purpose of temporary orders.

ANTONETTI V. HON. WESTERHAUSEN KLINGER

Because Mother had not alleged that she was seeking dissolution of her covenant marriage under subsection (5) in her petition for dissolution, the court erred by issuing a stay. The court also erred in attempting to resolve the grounds for dissolution through a temporary order

JF V. COMO

Whether the superior court may order Father to release mental health records on his recent alcohol abuse for in-camera review in a child custody dispute.

JF V. COMO

- The father sought a temporary order for unsupervised parenting time. The mother objected, believing it would jeopardize the children's safety because of Father's alcoholism. The father acknowledged he suffered from moderate to severe alcohol use disorder and agreed that he should not drink alcohol. He argued that he had rebutted any adverse presumption because his disorder was in early remission, he had tested sober for nearly 4 months, and he continued to participate in therapy.
- The trial court ordered Father to release five years of his mental health records for in-camera review, causing Father file a special action. In his Petition, he invoked the psychologist-patient privilege under A.R.S. 32-2085(A).

JF V. COMO

The COA held:

- Father impliedly waived the psychologist-patient privilege on the narrow topic of his alcohol abuse. The COA remanded for the court to reduce the responsive period of records from five years to one year.
- The psychologist-patient privilege is narrow because it excludes relevant evidence and impedes the fact-finder's search for the truth.
- The psychologist-patient privilege is also not absolute and waiver can apply (two forms of waiver: in writing or court testimony).
- A patient may impliedly waive the privilege by pursuing a course of conduct inconsistent with observance of the privilege.

BORJA V. BORJA

Did the superior court's grandparent visitation order mandating considerable visitation and vesting discretion with Grandparents rather than Mother constitutionally intrude on Mother's fundamental right to direct the care, custody, and control of her children.

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BORJA V. BORJA

Facts- The decree awarded Mother sole legal decision-making authority. Father ultimately requested and received no parenting time, due to his concerns about COVID-19. Grandparents later petitioned for visitation with the children requesting three visits per month, two-day visits during spring and winter breaks, the ability to take the children "to distant places" within the country, and notification of and ability to participate in the children's activities. Mother opposed a formal visitation schedule but did not oppose visitation altogether.

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BORJA V. BORJA

Trial Court Order:

- one weekend each calendar month, from 4:00 p.m. Friday to 4:00 p.m. Sunday, with three-weeks' notice to Mother;
- two weeks during summer break, at Grandparents' discretion to exercise visitation in a single, two-week period or over separate, one-week periods and with the ability to take the children out of state;
- visitation from 12:00 p.m. to 5:00 p.m. on Easter, Thanksgiving, and/or Christmas;
- five hours with all of the children on each child's birthday or a weekend day immediately following the birthday, to end no later than 6:00 p.m.;
- five hours with the children on each grandparent's birthday or a weekend day immediately following the birthday, to end no later than 6:00 p.m.; and
- weekly calls with the children.

BORJA V. BORJA

COA held:

- (1) Any visitation awarded to third parties must be minimally intrusive (51 days is too much);
- (2) Mandatory visits with Grandparents for all holidays and birthdays is more than a minimal burden and violates Mother's fundamental parenting rights;
- (3) Scheduling cannot be left solely to the Grandparents' discretion;
- (4) Requiring a parent to provide extensive advance notice of children's activities to Grandparents improperly infringes on a parent's right to direct the activities of his/her children; and
- (5) Requiring a parent to encourage weekly telephone calls impinge directly on a parent's communication with her children, intrude upon her ability to exercise parental control, and are an unconstitutional exercise of the superior court's authority.

HOFFMAN V. HOFFMAN

Does a marriage between first cousins, performed and valid in another state, violate the "strong public policy" of Arizona when the couple moves here?

When first cousins marry in another state where the marriage is valid then move to Arizona, do they have to comply with the requirements applicable if they had married in Arizona under A.R.S. § 25-101(B)?

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HOFFMAN V. HOFFMAN

The parties were first cousins who married in California in 2018, when they were both 53 years old. They agreed that their marriage was valid in California when performed, and remained valid. They later moved to Arizona.

Husband sought an annulment, relying on an Arizona statute stating that first cousins younger than 65 years old may marry "upon approval of any superior court judge in [Arizona] if proof has been presented to the judge that one of the cousins is unable to reproduce." Ariz. Rev. Stat. (A.R.S.) § 25-101(A) & (B) (2023).

The trial court ruled that the California marriage could be recognized in Arizona only if the parties sought approval from an Arizona court when they moved here.

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HOFFMAN V. HOFFMAN

The COA held:

- Arizona law does not require an Arizona court to approve marriages valid under the laws of another state when couples move here. Nor does the record show any "strong public policy" in Arizona precluding the marriage.
- California law governs whether the marriage is valid, and the parties did not dispute that the marriage is valid under California law. Because they were married in California, the parties did not have to comply with the requirements applicable if they had married in Arizona under A.R.S. § 25-101(B).
- A.R.S. § 25-101 does not require a couple validly married in another jurisdiction to have an Arizona court approve or amend the marriage when moving to Arizona, the superior court erred in concluding they had to seek such approval.

HOOBLER V. HOOBLER

Whether the court erred in ordering Husband to obtain a term life insurance policy to ensure that Wife would receive her community portion of the pension in the event of Husband's premature death.

Whether the court erred in attributing Husband's overtime income in the child support calculation where it considered his overtime work history and testimony about his past and future overtime work.

HOOBLER V. HOOBLER

Child Support- inclusion of overtime income

The trial court had sufficient reason to include overtime in its calculation of Father's gross income, as part of child-support calculation as he regularly worked and earned overtime at least for the past 10 years.

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HOOBLER V. HOOBLER

Retirement and Life Insurance

The order requiring Father to obtain life insurance policy did not constitute the impermissible creation of a new asset and did not constitute an attempt to circumvent A.R.S. § 38–846 (which prohibits a surviving ex-spouse from receiving a decedent ex-spouse's monthly pension).

The court's use of hybrid method of distributing Father's retirement accounts was within it's discretion.

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HOOBLER V. HOOBLER

Whether the court erred in ordering Husband to obtain a term life insurance policy to ensure that Wife would receive her community portion of the pension in the event of Husband's premature death.

Whether the court erred in attributing Husband's overtime income in the child support calculation where it considered his overtime work history and testimony about his past and future overtime work.

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BRUCKLIER V. BRUCKLIER

Child Support

- Absent an agreement between the parties, money previously paid over an obligation may not be used to offset future support payments. But the rule does not apply to temporary orders issued under A.R.S. § 25-315.

- When a final child support order is different from the obligation under a temporary order and thus creates over- or underpayments of support, the court must offset any net over- or underpayment and account for the disparity when equitably distributing the parties' community property.

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BRUCKLIER V. BRUCKLIER

Characterization of Property

- Where an equitable interest is acquired before the marriage even though legal title is not taken until after marriage, the property is sole and separate.
- Use of commingled funds does not transmute the character of real property, rather it entitles the community to an equitable lien against the property for the value of its contributions.

In Sum:

When Father paid the $50,000 in earnest money before the marriage, he acquired an equitable interest in Falcon Ridge. See Tucson Fed. Savs. & Loan Ass'n v. Sundell, 106 Ariz. 137, 141 (1970) (A purchaser acquired an interest in land when she paid earnest money.); Rigoli v. 44 Monroe Mktg., LLC, 236 Ariz. 112, 117, ¶ 17 (App. 2014) (A purchaser acquires equitable interest when the purchaser enters a binding contract and renders payment.). That Father's equitable interest did not mature into a title to Falcon Ridge until after the marriage does not alter that he acquired the property before marriage. Potthoff , 128 Ariz. at 561. Falcon Ridge was thus Father's separate property at the time of acquisition.3 See Lawson, 72 Ariz. at 261."

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BRUCKLIER V. BRUCKLIER

Tax Debt from Separate Returns

- It was error to apportion the parties' tax liability without evidence of the total amount of the debt, yielding a potentially unequal division.
- "The court erred by making an equitable apportionment based on the finding that Father acted without Mother's knowledge in accruing the debt. Debts incurred during marriage are presumed to be community. Schlaefer v. Fin. Mgmt. Serv., Inc., 196 Ariz. 336, 339, ¶ 10 (App. 2000). Generally, either spouse may incur debt unless one of the narrow exceptions applies. See A.R.S. § 25-215(D). For this reason, Mother's knowledge and consent to Father's filing status is irrelevant."
- It is error to find without supporting evidence "that Father's actions likely increased the community tax burden and by determining, again without supporting evidence about Mother's tax liability for the year, that assigning liability to each spouse was equitable."

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HUSTRULID V. STAKEBAKE

Whether a nonparent may seek joint legal decision-making under Arizona's third-party rights statute, A.R.S. § 25-409.

Whether the superior court erred by sua sponte reconsidering its initial ruling that the third-party petitioner was entitled to an evidentiary hearing on the merits of his petition.

Whether the superior court must hear evidence on the merits of the elements set forth in A.R.S. § 25-409(A) if the court does not summarily deny a third party's petition for legal decision-making or placement.

HUSTRULID V. STAKEBAKE

The father sought third-party rights to joint legal decision-making and placement pursuant to A.R.S. § 25-409(A), although his parental rights had already been terminated and the children had been adopted.

HUSTRULID V. STAKEBAKE

Awarding a parent whose rights have been terminated third-party rights is contrary to A.R.S. §§ 8-117 and 8-539 because the termination of parental rights completely severs and divests the parent and child of all legal rights, privileges, duties, obligations, and other legal consequences.

An award of third-party rights to such a party would discourage adoptive parents from allowing any relationship between that individual and the child.

The court cannot award joint legal decision-making authority and placement to a third party pursuant to A.R.S. § 25-409(A) ("It is inconsistent for a third party to allege a significant detriment if the child remains with the parent while also seeking joint legal decision-making that would leave the child in the parent's care.“)

Practice Point:

The court may “sua sponte deny a petition brought under § 25-409 that fails to sufficiently establish the required elements without allowing amendment of the petition or requiring the legal parent to respond."

MUNGUIA V. ORNELAS OPINION

Whether the superior court erred by granting a petition to change the first name of a child by improperly weighing the factors presented in Pizziconi v. Yarbrough.

MUNGUIA V. ORNELAS

Father initially disputed paternity and was not present for the birth. Mother named the child "Legend Messiah Ornelas." Father wanted to continue his family's tradition that the first-born son is given his father's first name. Mother did not object to adding Father's last name, but did object to the first name.

After testimony from Mother, Father and others, the court granted the petition, applying the factors specified in Arizona Revised Statute (A.R.S.) § 12-601(B) and Pizziconi v. Yarbrough, 177 Ariz. 422 (App. 1993).

The court changed the child's name to "Angel Legend Meessiah [sic] Munguia Ornelas."

MUNGUIA V. ORNELAS

The Pizziconi factors apply with equal force to a request to change a child's first name.

The best interest factors under Pizziconi are:

- the child's preference;
- the effect of the change on the preservation and development of the child's relationship with each parent;
- the length of time the child has borne a given name;
- the difficulties, harassment, or embarrassment that the child may experience from bearing the present or proposed name;
- the motive of the parents and the possibility that the use of a different name will cause insecurity or a lack of identity.

MUNGUIA V. ORNELAS

The court noted:

- The child had his original name for only a few months;
- Changing his name could help develop his relationship with Father;
- The child had a strong bond with Mother and the change would not affect that;
- No difficulties, harassment or embarrassment were identified for the child's current or requested name;
- Father's motive was to follow family tradition, while Mother's was based on her belief that a child should have his own name; and
- The name change would not cause any insecurity or lack of identity.

HUEY V. HUEY

Whether an award of spousal maintenance for an indefinite duration may be justified by evidence of a disabling mental health condition at time of trial but absent evidence that the disabling mental health condition will continue permanently.

HUEY V. HUEY

The wife's expert testified that her mental health condition (which prevented her from working) was not permanent. The court found the wife eligible for $2,500/month in indefinite spousal maintenance.

The COA held:

• Absent evidence of a permanently disabling mental health condition, an award of indefinite spousal maintenance is not an available option.

• The COA considered the expert's testimony that the wife's condition was not permanent along with the wife's prior earning capacity, suggesting that all factors in 25- 319(B) can still be considered when there is a non-permanent disability when concluding that an indefinite award is nonetheless appropriate.

FERRILL V. FERRILL

Whether a party still living in the marital home was entitled to reimbursement for making mortgage payments with separate property while the divorce was pending.

FERRILL V. FERRILL

- Husband moved out of the marital residence, which was classified as community property.
- Months later, Wife filed for divorce. She paid the mortgage with her separate funds.
- At trial, Wife's request for reimbursement for the funds she used to pay the mortgage was denied.

FERRILL V. FERRILL

The COA held:

If a party pays a community mortgage – or other community debt – with separate funds after date of service, those payments must be "accounted for" in an equitable division of property and debt. Further, even if the paying spouse continues to live at the residence, the paying spouse still is entitled to reimbursement.

A spouse who is "ousted" from the residence is entitled to an offset for up to one-half of fair market rental value of the home. If there is no ouster, then there is no reimbursement claim.

The party who seeks an offset for fair market rental value of the home bears the burden of showing both ouster and fair market value.

If the parties seek temporary orders for exclusive use, they can also seek orders for financial responsibility for payments on the marital residence.

GISH V. GREYSON

Whether the domestic relations statutes allow a court to award one parent most of the parenting time and the other parent sole legal decision-making.

Whether a behavioral professional (TI or COBI) may decide if a parent is entitled to unsupervised or increased parenting time.

Whether the court may order a TI or COBI without specifically finding on the record that parties can afford such professionals.

GISH V. GREYSON

The Trial Court gave Mother most of the parenting time while awarding Father sole legal decision-making authority.

- The Court of Appeals held:
- A court may award sole legal decision-making to a party, even though that party was not awarded any parenting time or supervised parenting time. Doing so does not violate A.R.S. § 25-403.01(D).
- A court may not abdicate its authority to make parenting time or legal decision-making orders to a behavioral health professional. In doing so, the parties are deprived of due process rights. The Court may consider any recommendations, but the therapist cannot make the recommendation.
- While a court may establish a self-effectuating milestone to change parenting time, the achievement of these milestones cannot be determined by a behavioral health professional.
- The court must make findings on the record as to a party's ability to pay for behavioral health services.