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Family Law News

this issue....

STATE BAR OF ARIZONA

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FROM THE CHAIR

MITCHELL REICHMAN

Engage and Learn to Thrive in the Practice of Family Law

DO YOU FEEL IT? EXCITEMENT IS BEING GENERATED from a renewed commitment to create an environment in which our family law community will thrive. The early results are already impressive. A few weeks ago, judges and well-respected family law attorneys invested a day - clearing their calendars and the Old Courthouse in downtown Phoenix - to provide education and training in the now annual Family Law Trial College.

Following an encouraging turnout in Tucson, the first "Town Hall" in Maricopa County will happen on Friday, December 6, from 2:00 p.m. to 4:00 p.m. at the South Court Tower in the Superior Court Complex in Phoenix. Our judges are interested in knowing your view of the challenges that result from systematic issues within the court system to improve the courts. This is a unique and timely. We have an opportunity to share information and ideas to the newly formed Family Court Improvement Committee. Their first project is to implement meaningful changes in the court system.

We have an opportunity to share information and ideas... to implement meaningful changes in the court system.

... judges and family law attorneys invested a day to provide education and training in the annual Family Law Trial College.

Over the next eight months our Family Law Section will sponsor training specifically targeting newer practitioners in the form of "101 Basics of Family Law" including topics:

- Child support
- FKA Custody and parenting time
- Legal decision making
- Procedural and discovery issues
- Spousal maintenance.

An ever-growing number of lawyers and judges are getting engaged and working towards providing more education and training, promoting a higher level of professional conduct, and creating opportunities for meaningful partnership between the bench and bar. All of these efforts are designed to effectuate changes to make our jobs easier and to be in a better position to help our clients.

Now, more than ever, there is no good reason for anyone to endure the practice of family law alone. I urge you to make an authentic effort to get involved. Reach out to connect with other attorneys who practice family law, particularly more seasoned ones. Share your own experiences and expertise by participating in the upcoming Town Hall, offer to present at a CLE program, encourage other lawyers to join the family law section, and take advantage of the learning opportunities and programs in family law throughout the year.

A healthy community is a robust collection of strong relationships. When we develop a history of trust, a shared sense of mutual belonging, and engage in habits of mutual assistance, we will all thrive in the practice of family law. So don't wait any longer; get engaged now. FL

SPONSORED TRAINING SPECIFICALLY FOR NEWER PRACTITIONERS IN THE FORM OF "101 BASICS OF FAMILY LAW"

Members of your Executive Council recently published a special newsletter in which each expressed why he or she volunteers their time and effort to serve on the Council. Each member offered to be a resource for individual family law attorneys to contact for guidance and advice.

navigating

THE RAPIDS

By
Mitchell Reichman

Temporary Orders Hearings in Maricopa County

One of the most anxiety-producing experiences for both a family law client and their attorney is navigating through the process relating to a Maricopa County temporary orders hearing. The client's anxiety is easy to understand. It may be their first experience in a contested hearing, the first time a judge is going to be presented with evidence concerning their case, or the first time ever testifying. Almost always, there is a lot at stake. No matter how many years a lawyer has practiced, what produces their anxiety is that rules of evidence and procedure are often ignored without consequence **and** there is insufficient time allocated to put on all of the important evidence for the judge to hear.

Conflicting Rules

The first thing to determine is what rules are going to apply to discovery obligations in connection with the temporary orders hearing as the Rules are contradictory. In most cases, the Rule 49 deadlines for initial disclosures will expire prior to the hearing. Rule 49 also provides for disclosure of witnesses and expert witnesses in particular. The court may not allow you to call any witness who is not disclosed at least 60 days before trial or by a different deadline ordered by the court. If the court has not provided for a different deadline, it is typically impossible to disclose these witnesses 60 days before the temporary orders hearing.

NO MATTER HOW MANY YEARS A LAWYER HAS PRACTICED, WHAT PRODUCES THEIR ANXIETY IS THAT RULES OF EVIDENCE AND PROCEDURE ARE OFTEN IGNORED...

However, Rule 47(f) provides that not later than three days before the date set for the temporary orders hearing, the parties must exchange exhibits and witness lists, including the subject of each witness' anticipated testimony. **There is no reference to the Rule 49 requirements in Rule 47.** It is uncertain whether exhibits and witnesses that are not disclosed until three days before the hearing will survive a challenge of untimely disclosure.

There are further and different disclosure deadlines not consistent with either Rule 47 or Rule 49 found in Rule 76.1 which compels parties to file a pretrial statement 20 days before trial. The pretrial statement must include a list of exhibits each party intends to use at trial, a statement that all exhibits and reports of experts who have been listed as witnesses have already been exchanged, and a list of witnesses each party intends to call at the trial.

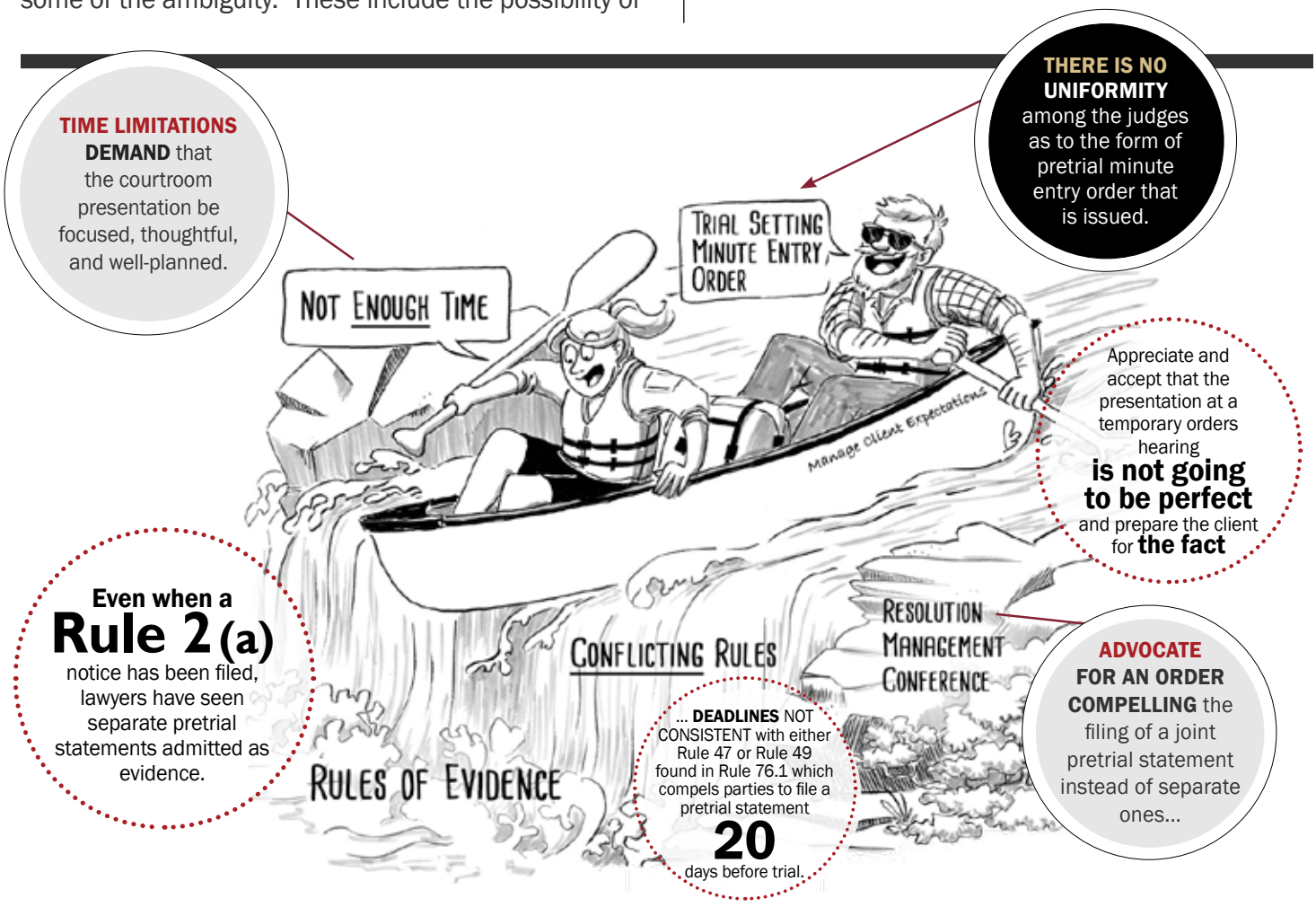
Trial Setting Minute Entry Order

If the rules confusion was not enough, it can be compounded by the court's trial setting minute entry order. There is no uniformity among the judges as to the form of pretrial minute entry order that is issued. Often, the form includes new deadlines for compliance with Rule 49 and for exchanging exhibits. Occasionally this order does not mention submission of a pretrial statement. Commonly, the deadline for submitting a pretrial statement is shortened to less than 20 days before the hearing. If there is no specific reference to any of the disclosure deadlines - or any of the other rules that contain disclosure deadlines - it is implied that Rule 47 disclosure deadlines have been effectively overridden.

Resolution Management Conference

The Resolution Management Conference ("RMC") is an opportunity to address these conflicts and clear up some of the ambiguity. These include the possibility of having conflicting disclosure deadlines, being unable to present information, or be in a position of having to argue against or for the admission of testimony or documents based on lack of timely disclosure. A disclosure schedule must be established at the RMC. Prior to the RMC, serve requests for production of documents, uniform and/or non-uniform interrogatories. Then at the RMC, ask the court to set deadlines for all of the following:

- compliance with Rule 49
- for the disclosure of expert opinions and reports
- to disclose witnesses and their anticipated testimony
- to respond to outstanding discovery
- for the execution of releases for mental health and/or medical records
- for a preliminary exchanging of lists of witnesses and exhibits at least seven days prior to the submission of a pretrial statement and
- the joint pretrial statement and exhibits to be

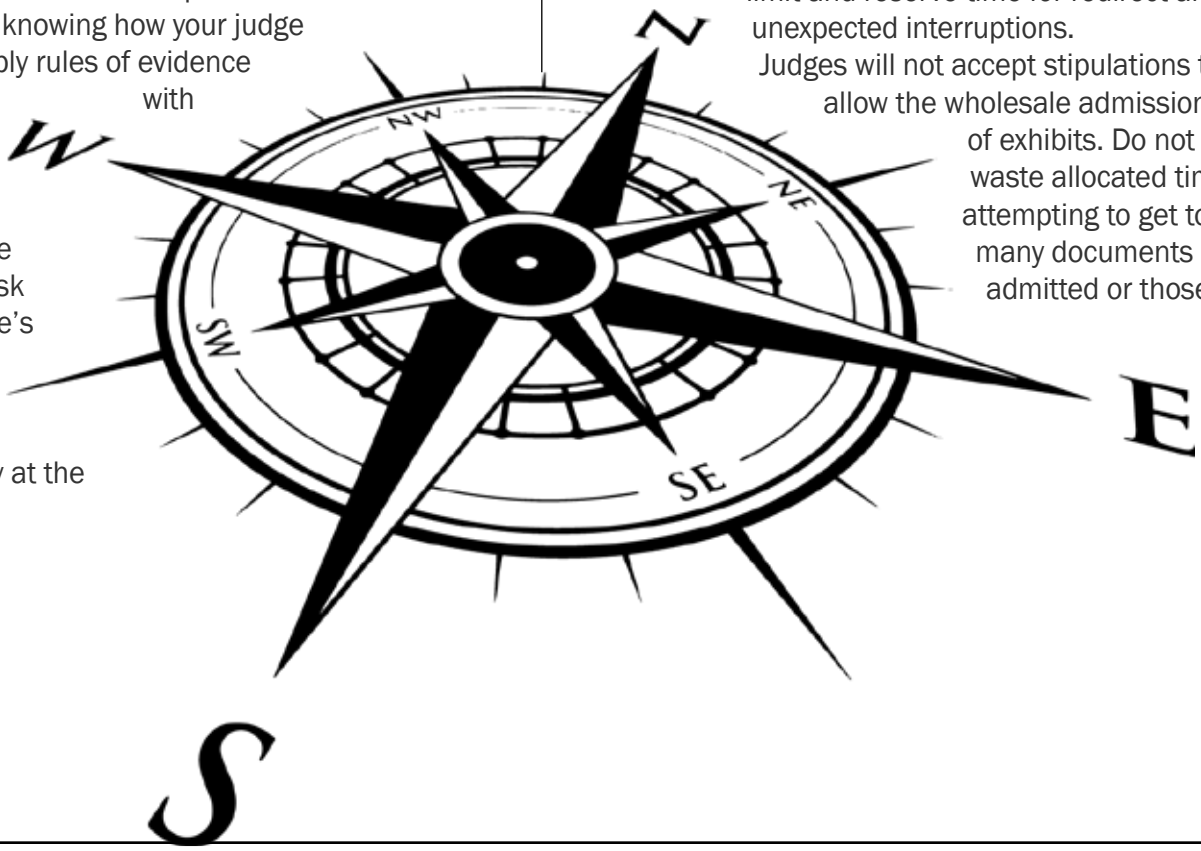


delivered to the court not less than seven calendar days prior to the hearing

Advocate for an order compelling the filing of a joint pretrial statement instead of separate ones and an order compelling the exchange of position statements no less than three working days before the joint pretrial statement is due.

Rules of Evidence

Another anxiety-producing reality is not knowing what rules of evidence will apply at the temporary orders hearing, if any! In our experience, even when a Rule 2(a) notice has been filed, we have seen separate pretrial statements admitted as evidence. Often they include the hearsay statements of children or others - sometimes even individuals not specifically identified by name – and even referencing exhibits that are admitted without foundation simply by incorporation. A parent's statement of the best interest factors, even if based entirely on personal knowledge and including no hearsay statements, might not be admitted. However, parents are routinely allowed to testify about what children have said to them - or allegedly said to them - and documents are often admitted where no proper foundation has been provided. To avoid the anxiety of not knowing how your judge is going to apply rules of evidence and deal with specific questions related to the case, be prepared to ask what the judge's practice is on evidence and testimony at the RMC.



Not Enough Time

Layered on top of all of these anxiety-producing uncertainties is the reality that you are unlikely going to have the amount of time that you need to present the evidence. If the temporary orders hearing is set for 60 minutes, expect to have 25 minutes for direct, cross examination, and any redirect. Similarly, if it is a 90-minute hearing, 40 minutes are allocated to each side. These time limitations demand that the courtroom presentation be focused, thoughtful, and well-planned.

Cross examination needs to be short. Without exception, every question should be a leading question. Nothing wastes time more than giving the opposing party the opportunity to answer an open-ended question and provide a series of nonresponsive or misdirected narratives. Focus on areas which may reflect a lack of credibility or an extreme position. Get in and get out!

Direct examinations should be the result of practicing with witnesses, providing them written questions in advance, timing how long it takes for you to ask and for them to answer each question. Pare down the presentation to be well within the time limit and reserve time for redirect and unexpected interruptions.

Judges will not accept stipulations to allow the wholesale admission of exhibits. Do not waste allocated time attempting to get too many documents admitted or those for

which you are unable to establish a proper foundation.

During presentation, encourage the judge to volunteer his or her thoughts about the areas that he or she is most concerned about after having read the pretrial statement. Even if unsolicited and the judge offers it to you gratuitously, listen carefully and give the judge what they want to hear. Do not spend time presenting prepared evidence or scripted questions if those are not areas of concern for the judge.

Manage Client Expectations

Appreciate and accept that the presentation at a temporary orders hearing is not going to be perfect and prepare the client for the fact that there are likely going to be documents marked as exhibits which do not get admitted or questions that were not asked.

The combination of uncertainty about disclosure obligations, which rules are going to be applied or disregarded, and what evidence will or will not be admitted is stressful enough. Layer on top of that a courtroom presentation process in which there is not enough time to put on much evidence and the result is a pressure filled challenge for even the most experienced practitioners.

Adopting the best practices that I have recommended will not only maximize the client's probability of obtaining a successful outcome, but also will let the attorney get a good - or at least better - night's sleep before the next temporary orders hearing. FL

About the Author: **Mitchell Reichman** is an Arizona State Bar board certified family law specialist and attorney at the Phoenix law firm of Jaburg Wilk. He is rated AV Preeminent by Martindale- Hubbell. Mitchell is named a Best Lawyer in America by Best Lawyers, Arizona Top 10 Family Law Lawyer by Arizona Business Magazine and a Southwest Super Lawyer. Mitch is experienced in representing clients in high-conflict divorces.

By **Launi Jones Sheldon, Strategic Legal Services**

Preparing Your Clients for Home Visits During a Custody Evaluation

...it is apparent that many family law attorneys do not have the time or resources to thoroughly prepare clients for significant events in their case such as a custody evaluation,...

AFTER WORKING AS A FAMILY LAW ATTORNEY FOR YEARS, it became apparent that many family law attorneys do not have the time or resources to thoroughly prepare clients for significant events in their case such as a custody evaluation, parenting coordinator meetings, depositions or even trials. As a result, I developed a service aimed at preparing other lawyers' clients for depositions, trials, custody and related evaluations, vocational evaluations, and parenting coordinator meetings. This article will focus on preparing clients for one crucial aspect of custody evaluations: home visits.

At any time in the custody evaluation process, an evaluator may decide a home visit is appropriate. The purpose is to evaluate how a parent and child interact and view the condition of the home first-hand. The attorney's goal in preparing a client for a home visit is to ensure a client can present the best home and the best version of himself or herself as a parent.

Typically, evaluators or individuals they hire to assist them with home visits spend 2-3 hours observing a parent and child, as well as the child's and parent's interactions with other family members. A home visit may include observing the parent and child cooking and eating a meal together, playing a game or with toys together, or working on homework together. It also will include a review of the areas of the home in which a child may play, sleep, and eat.

Parents can practice the activities they plan to engage in with the children prior to the home visit. I recommend parents start approximately two weeks before the planned visit. This is not coaching, rather it is ensuring that he/she is presenting the best picture of their home and parent-child interaction. It should not appear as though a parent has not even considered the evaluation or failed to prepare for the home visit. In fact, the evaluator expects parents during home visits, to put forth their best self and make good choices about the activities they choose in the child's best interests.

In fact, the evaluator expects parents during home visits to put forth their best self and make good choices about the activities they choose in the child's best interests.

TIPS FOR THE HOME VISIT:

1. Your client should have the house and child's room cleaned at least two weeks prior to the home visit, and keep it clean for the home visit. This includes ensuring there are age appropriate toys, clean clothes, clean diapers, trash/dirty diapers removed, and age-appropriate childproofing (plug covers, anchored furniture, medications or guns out of reach/access, and sharp edges covered). If crawling children are present, consider advising a client to clean the carpets/rugs. It's a good idea to display children's artwork or successful school projects/tests. In addition, there should be no animal feces indoors or excessively outdoors.

2. At least two weeks in advance of a home visit, advise your client to practice playing with children by engaging in several different games or using several different types of toys. A client should choose activities that the child enjoys and that are age appropriate. Watching television or other electronic devices during the home inspection is not advised. If a child knows what to expect and has done the activity before, the child is more likely to be happy, comfortable, and cooperative when the evaluator is present. Further, this sort of "practice" prevents frustration and confusion for the child.

3. During the visit, your client should speak proudly and positively about the child to the evaluator and in front of the child. However, a client should be careful not to brag to the point that it appears unnatural or makes the child uncomfortable.

4. During the visit, if asked or if appropriate, the client should make positive complimentary statements about the other parent. Do not speak about the case to the child or in the child's earshot or view. Again, the client should not appear unnatural when making these statements.

5. A client should refrain from whispering to the child in the evaluator's presence and plan to speak in English unless permitted to use another language.

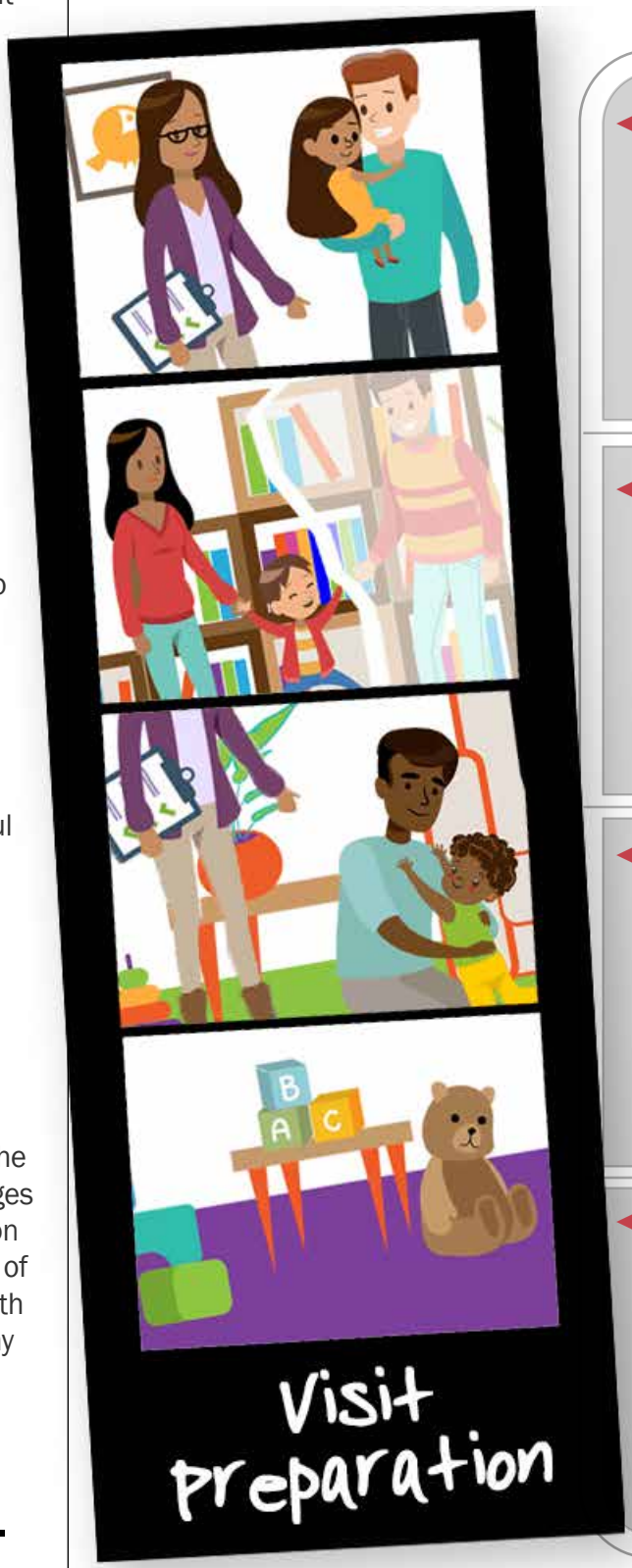
6. A client should have a plan in place for how he or she plans to discipline or correct the child if that becomes necessary during the home visit. A client should be careful and thoughtful in their discipline or correction of the child. At the same time, a client should not engage in discipline that is so out-of-character as to alert the child (and the evaluator) that he/she is "acting" and not being genuine.

THERE ARE MANY MORE aspects of the home visit. In fact, I spend eight pages in my Custody Evaluation Preparation book discussing this important part of any custody evaluation. However, with the above tips as a starting point, my hope is that your client will present their best self. FL

To learn more, please visit my website at:
https://www.strategiclegalservicesaz.com/

Custody Evaluation Preparation

THE ATTORNEY'S GOAL IN PREPARING A CLIENT FOR A HOME VISIT IS TO ENSURE A CLIENT CAN PRESENT THE BEST HOME AND THE BEST VERSION OF HIMSELF OR HERSELF AS A PARENT.



- SPEAK PROUDLY and positively about the child to the evaluator and in front of the child. However, be careful not to brag to the point that it appears unnatural...
- IF ASKED or if appropriate, make positive complimentary statements about the other parent. Do not speak about the case to the child or in the child's earshot or view.
- REFRAIN FROM WHISPERING to the child in the evaluator's presence and plan to speak in English unless permitted to use another language
- BE CAREFUL and thoughtful in discipline or correction of the child. At the same time, do not engage in discipline that is "out-of-character"...

Crossover

between Family Court and Probate Court: Part 1

by **Kathleen Stillman**
Fromm Smith and Gadow, P.C.

WHEN TWO PARTIES ARE SEEKING TO DISSOLVE THEIR MARRIAGE, THEY MAY NOT REALIZE THE LONG-REACHING IMPACT THAT THE FINAL COURT ORDERS WILL HAVE ON THEIR CHILD AND THEIR RELATIONSHIP WITH THE CHILD ONCE HE/SHE IS AN ADULT.

The interplay between family court and probate court is prevalent in today's family law practice. Although guardianships related to incapacitated adults are handled through the probate court, it is important to understand how and when they cross over into the practice of family law, and vice versa. First, the guardianship of a child the parties have in common may be significantly impacted by the outcome of a family law case. Second, a guardianship may be necessary for one of the parties involved in the divorce when he/she is no longer able to make decisions. This article will focus on the first situation.

When two parties are seeking to dissolve their marriage, they may not realize the long-reaching impact that the final court orders will have on their child and their relationship with the child once he/she is an adult. It is likely they are just trying to "survive" their co-parenting relationship for so long as the child is a minor. However, when the parties have a child that will need a guardian once emancipated, the outcome and final orders that are issued in the family law case will have an impact that reaches beyond the child's eighteenth birthday.

The Arizona Revised Probate Code sets forth a number of provisions that refer to determinations that have been made in family court. When a petition for appointment of a guardian is initiated within two years after the child's eighteenth birthday, the court shall appoint as guardian any person who had sole legal decision-making authority at the time the child turned eighteen. If the parties shared joint legal decision-making authority at the time of the eighteenth birthday, the court shall appoint the parties as co-guardians. The probate court may enter an appointment different from the family court orders if the court finds that it is not in the best interest of the incapacitated person. A.R.S. §14-5311 (D).

When one parent has sole legal decision-making authority and subsequently is appointed as the sole guardian of an adult incapacitated child, this has the potential to result in a detrimental

▲ Although it is the guardian's duty to encourage and allow contact between the incapacitated person (child that is now an adult) and those who have a significant relationship with the child; the guardian can limit, restrict or prohibit contact if the guardian believes it is detrimental to the child.

◀ When the parties have a child that will need a guardian once emancipated, the outcome and final orders that are issued in the family law case will have an impact that reaches beyond the child's eighteenth birthday.

outcome. Although it is the guardian's duty to encourage and allow contact between the incapacitated person (child that is now an adult) and those who have a significant relationship with the child; the guardian can limit, restrict or prohibit contact if the guardian believes it is detrimental to the child. In this situation, there is no doubt that the protracted litigation from family court will now become protracted litigation in probate court. Despite the presumption discussed above, the "out" parent that was not awarded joint legal decision-making authority can petition the court in the guardianship matter for an order to have contact with the child. While it is the moving parties' burden to show a significant relationship and that the contact is in the best interest of the emancipated adult child, there is a means to access the court and prevent being completely shut out of the adult child's life. A.R.S. §14-5316.

WHILE IT IS THE MOVING PARTIES' BURDEN TO SHOW A SIGNIFICANT RELATIONSHIP AND THAT THE CONTACT IS IN THE BEST INTEREST OF THE EMANCIPATED ADULT CHILD, THERE IS A MEANS TO ACCESS THE COURT AND PREVENT BEING COMPLETELY SHUT OUT OF THE ADULT CHILD'S LIFE.

When handling a divorce that involves a child that will require a guardian once emancipated, it is important to review and understand the impact that the final legal decision-making and parenting time orders will have on the guardianship. FL

About the author: Kathleen Stillman is an associate attorney with the family law firm of Fromm Smith and Gadow, P.C. handling family law and guardianship matters. Her background as a special education teacher lends insight into working with clients and children with disabilities. You can contact Kathleen at kstillman@fsg-law.com.

In Arizona, the family court is rarely required to make specific findings on contested issues absent a formal request for findings of fact and conclusions of law. However, despite nebulous and subjective legal standards which can lead reasonable minds to disparate conclusions, the Arizona legislature has identified certain issues which require the finder of fact to determine and articulate findings. Perhaps not coincidentally, these issues are those which are often the most subjectively viewed and hotly contested. On these issues, the statutes are often a practitioners most reliable source of support for an argument, and when invoked and utilized appropriately, can create and rebut legal presumptions; when ignored, can open the door to legal error.

by **JARED SANDLER, ESQ.**
FROMM, SMITH & GADOW, P.C.

"STATUTES NOT JUST A NUMBERS GAME."

UTILIZING STATUTORY MANDATES TO BETTER ADVOCATE

An opportunity to shift a burden of proof or legal presumption, is an opportunity to better advocate for a client.

For example, "In a contested legal decision-making or parenting time case, the court shall make specific findings on the record about all relevant factors and the reasons for which the decision is in the best interests of the child." A.R.S. § 25-403(B). When the Court fails to make A.R.S. § 25-403 written findings in a contested matter including legal decision making and parenting time it has been found to be an error of law. Owen v. Blackhawk, 206 Ariz. 418, 421, 79 P.3d 667, 670 (Ct. App. 2003). Consider the strength of an argument for sole leal decision-making when an attorney fully explores the legal presumptions against joint legal decision-making in a case where documented substance abuse or domestic violence exist. An opportunity to shift a burden of proof or legal presumption, is an opportunity to better advocate for a client.

Similarly, A.R.S. § 25-319(B) represents a myriad of opportunities to introduce facts and information to support or defeat a claim for spousal maintenance when explored fully. The court may abuse its discretion if it fails to apply one of the applicable factors with respond to which the parties presented evidence. Elliott v. Elliott, 165 Ariz. 128, 136, 796 P.2d 930, 938 (App.1990).

HOWEVER, DESPITE NEBULOUS AND SUBJECTIVE LEGAL STANDARDS WHICH CAN LEAD REASONABLE MINDS TO DISPARATE CONCLUSIONS, THE ARIZONA LEGISLATURE HAS IDENTIFIED CERTAIN ISSUES WHICH REQUIRE THE FINDER OF FACT TO DETERMINE AND ARTICULATE FINDINGS.

The pretrial statement is the most obvious place to utilize the statutes to your benefit. Not only is the court required to list findings as it relates to the factors for legal decision-making, parenting time and qualification for spousal support, but the actual form of order provided to the judicial officers provides the spaces for each factor. A practitioner who does not elicit testimony and address each factor in their pretrial statement not only misses the opportunity to fully advocate for their client but leaves a visible and metaphorical hole in the court's findings and subsequent order.

Not every factor will be applicable to every case. However, it is a mistake to ignore factors that do not directly benefit your case or highlight "bad facts." Addressing those facts or distinguishing your case from other precedents in a detailed pretrial statement can take the wind from the sails of opposing counsel. Ultimately, addressing and minimizing the strengths of opposing counsel's arguments can be as important, if not more important, than providing positive evidence.

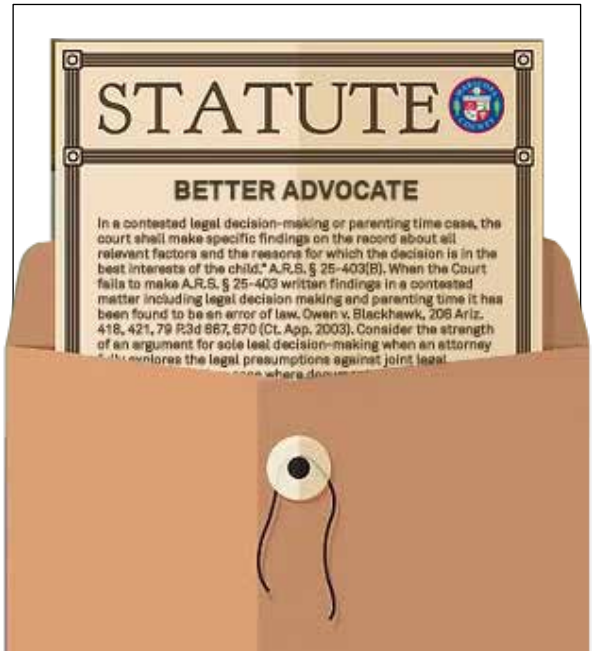
As a practical matter, requesting the exhibit list from the clerk in advance of finalizing your draft will allow reference to the key exhibits in each pertinent section of the pre-trial statement along with your client's narrative position and recitation of the relevant facts and law. Making the job of the court easier only further serves your client.

Another key consideration in any family court order aside from the division of property is laying the foundation for future potential litigation. The

order and findings create a record and benchmark against which future requests for modification will be measured in determining whether the moving party has met their burden for modification. Reid v. Reid, 222 Ariz. 204, 209, 213 P.3d 353, 358 (Ct. App. 2009). Setting this benchmark can strategically allow inclusion of facts or circumstances that make it more or less likely future events will constitute a substantial and ongoing change of circumstances and make it more likely the order is modifiable in the future. Similarly, it is likely the court would find that some future changes when clearly identified were anticipated or known, making the order less likely to be modified. All of these considerations should be made well prior to any discovery and disclosure deadline to ensure the documentation needed to set the benchmark will be available at trial.

Inclusion of organized and concise facts, testimony, and other evidence that directly relate to all relevant statutes provides the best opportunity for presentation of a position. In doing so, the necessary information is provided to the finder of fact in the most relevant form and best advocates for your client's position. FL

SETTING THIS BENCHMARK CAN STRATEGICALLY ALLOW INCLUSION OF FACTS OR CIRCUMSTANCES THAT MAKE IT MORE OR LESS LIKELY FUTURE EVENTS WILL CONSTITUTE A SUBSTANTIAL AND ONGOING CHANGE OF CIRCUMSTANCES AND MAKE IT MORE LIKELY THE ORDER IS MODIFIABLE IN THE FUTURE.



About the author: Jared Sandler exclusively practices family law at Fromm Smith & Gadow, P.C. Mr. Sandler focuses on complex divorce or custody matters and has been awarded the designation of "Rising Star" from SuperLawyers for each year since 2016, was given an "AV" rating from his peers through Martindale-Hubbell and in July of 2019 was voted Phoenix Magazine Readers' Pick for Best Divorce Lawyer. Mr. Sandler can be reached at jsandler@fsg-law.com

PRACTITIONER TIP:

An Award of Sole Legal Decision-Making is Possible Without a Finding of Significant Domestic Violence

by **David Rose**

SUBSECTION (A) OF A.R.S. § 25-403 lists the factors that the court must consider when determining legal decision-making of a child. Generally, when legal decision-making is contested, the court is required to *"make specific findings on the record about all relevant factors and the reasons for which the decision is in the best interests of the child."* A.R.S. § 25-403(B). The presence of domestic violence in a parenting relationship is one of those factors. See A.R.S. § 25-403(A)(11). Practitioners often argue that an award of sole legal decision-making is only appropriate if there is *"significant"* domestic violence. This argument fails.

If the court finds that certain acts of domestic violence occurred between the parents, whether significant or not, *"there is 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). While A.R.S. § 25-403.03(A) creates an absolute bar against an award of joint legal decision-making if the trial court finds one parent has a *"significant history"* of domestic violence, subsection D lowers that bar a little and *"[f]or the purposes of this subsection,"* both defines the type of domestic violence the court may consider and the court's obligation. See Olvera v. Olvera (No. 2CA-CV 2015-00039 Ariz. App., 2015). (Memorandum Decision cited for persuasive value). See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Civ. App. P. 28(a)(1), (f). Under A.R.S. §25-403.03 a court may not award joint legal decision making if a parent,

1. Intentionally, knowingly or recklessly causes or attempts to cause sexual assault or serious physical injury to the other;

2. Places a person in reasonable apprehension of imminent serious physical injury to any person; or

3. Engages in a pattern of behavior for which a court may issue an ex parte order to protect the other parent who is seeking child custody or to protect the child and the child's siblings.

In addition, A.R.S. § 25-403.03(D) provides an exception to balancing of the best-interest"

Without a history of "significant" domestic violence, a court may award sole legal decision-making if it conducts a two-part test...

"THE COURT IS REQUIRED TO MAKE SPECIFIC FINDINGS ON THE RECORD ABOUT ALL RELEVANT FACTORS AND THE REASONS FOR WHICH THE DECISION IS IN THE BEST INTERESTS OF THE CHILD."

factors. Hurd v. Hurd, 223 Ariz. 48, 51, ¶ 13, 219 P.3d 258, 261 (App. 2009). If such a parent is seeking sole or joint legal decision-making and fails to rebut the presumption, *"the court need not consider all the other best-interest factors"* listed in § 25-403(A). Hurd, 223 Ariz. at 51, ¶ 13, 219 P.3d at 261.

Thus, even without a history of *"significant"* domestic violence, a court may award sole legal decision-making if it conducts a two-part test: 1.) The court must find that a party engaged in the conduct proscribed in A.R.S. § 25-403.03; and 2.) The court must then determine if the party has rebutted the presumption. To rebut the presumption a party committing an act of domestic violence, must satisfy the court that joint legal decision-making is still in the best interests of the child. Based on this requirement, it is important that practitioners seeking sole or joint legal decision-making on behalf of a parent who may have arguably committed domestic violence, make their client aware of the need and importance of rebuttal evidence. FL

Under A.R.S. §25-403.03 a court may not award joint legal decision making if a parent:

1. **INTENTIONALLY, KNOWINGLY OR RECKLESSLY causes or attempts to cause sexual assault or serious physical injury to the other**
2. **PLACES A PERSON in reasonable apprehension of imminent serious physical injury to any person**
3. **ENGAGES IN A PATTERN OF BEHAVIOR for which a court may issue an ex parte order to protect the other parent who is seeking child custody or to protect the child and the child's siblings**

Even without a history of "significant" domestic violence, a court may award sole legal decision-making if it conducts a two-part test: ▶

1. **THE COURT MUST FIND that a party engaged in the conduct proscribed in A.R.S. § 25-403.03.**
2. **THE COURT MUST then determine if the party has rebutted the presumption.**

HOT TIPS CORNER

Courtesy of **JENNY GADOW,** Fromm, Smith & Gadow, P.C.

You Can Change Your Client's Last Name During A Case. There is no need to wait until a Decree is entered. A.R.S. §25-325(C) states: Upon request by a party at any time prior to the signing of the decree of dissolution or annulment by the court, the court shall order that party's requested former name be restored.

Simply file a Motion asking for the name change and you can empower your clients.

Get Your Clients Access To Funds More Quickly. You can obtain an order to equally divide the liquid assets that exist at the time the Petition is served. A.R.S. §25-315(B) states: The court shall provide for an order for equal possession of the liquid assets of the martial property that existed as of the date the petition for dissolution or legal separation or annulment was served, unless the court finds that there is good cause not to divide those assets.

This is a great way to help in those cases where one party controls all of the accounts.

IMPORTANT CLE DATES

*anticipated

November 15, 2019	**Advanced Family Law CLE (Tuscon)**
January 16 - 17, 2020	**Family Law Institute (Phoenix)**
June 10 - 12, 2020	**State Bar Convention**
* July 1- August 1, 2020	**Deadline to Apply for Specialization Application**
July 12 -15, 2020	**CLE By The Sea (Coronado, CA)**
* August 2 - October 1, 2020	**Application for Specialization Accepted with Late Fee**
* September 15, 2020	**MCLE Affidavit Filing Deadline**

CASE LAW UPDATE

The Family Law Section regularly prepares a summary of recent Arizona family law decisions. Summaries are located on the Section's web page at:
www.azbar.org/sectionsandcommittees/sections/familylaw/familylawcaselawupdates/

Want to contribute to the next issue of Family Law News? … If so, the deadline for submissions is December 21, 2019.

Would you like to...

- Express yourself on family law matters?
- Offer a counterpoint to an article we published?
- Provide a practice tip related to recent case law or statutory changes?

WE WANT TO HEAR FROM YOU!

PLEASE SEND YOUR SUBMISSIONS TO:

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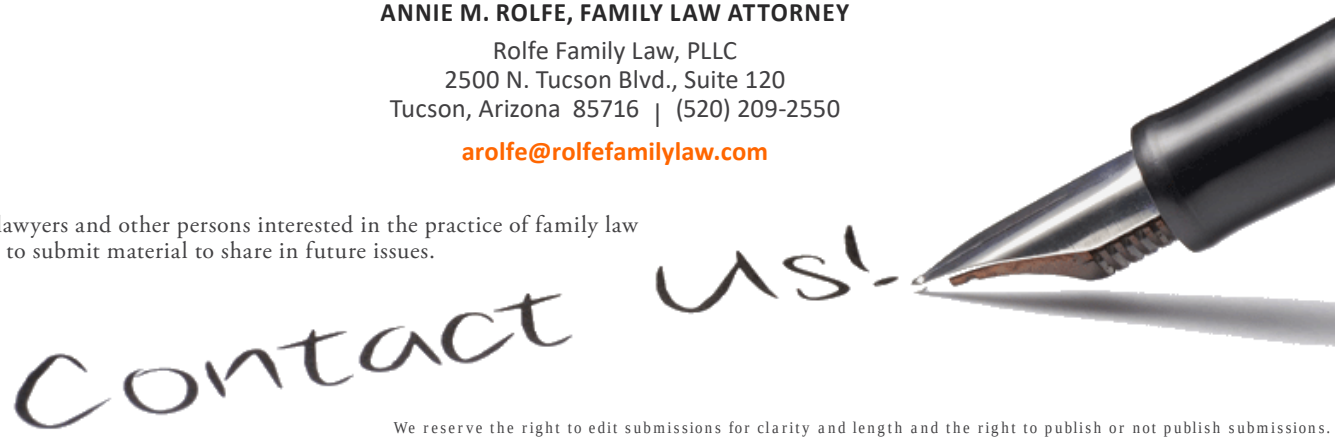
arolfe@rolfefamilylaw.com

We invite lawyers and other persons interested in the practice of family law in Arizona to submit material to share in future issues.



We reserve the right to edit submissions for clarity and length and the right to publish or not publish submissions.