How To Represent Yourself in Family Court

By Billie Tarascio, Attorney
& Founder of Modern Law
& Access Legal Documents

MODERN LAW

Introduction

This ebook is specifically designed to help people who are facing divorce or other family law issues. My name is Billie Tarascio and I am so happy to introduce you to what we do at Access Legal & Modern Law.

I am a family law attorney in Mesa, Arizona. I have been practicing family law for the last 10 years, and I absolutely love what I do as the owner of the family law firm Modern Law.

Within my work at Modern Law, it has become very clear that the vast majority of people are representing themselves and there are not enough resources available to self-representing litigants. In fact, between 80 and 90% of people in a family law case represent themselves in family court.

Access Legal & Modern Law

Access Legal is a legal documents company that was created out of my Mesa, Arizona law firm, Modern Law, to bring law firm resources to you -- an intelligent person who is not a lawyer but who wants to represent yourself. Our goal is to use smart software that is continually updated to allow you to represent yourself. The following ebook is to help you represent yourself in family court – whether you're working with an attorney or you're on your own. This high level view of the family law process will address the procedures and substantive legal issues that you need to know.

Feel free to reach out to me, either through Modern Law or through Access Legal when you have a question. By using Access Legal you can create professional, customized legal documents as we walk you through your case, step-by-step.

These are the same documents that we use within Modern Law that have been made available to you through a very easy ques- tion-and-answer format on the Access Legal website at a fraction of the cost of working with an attorney.

It's really an outstanding resource that we are very excited to offer and if you have more questions on that, let me know, but feel free to check out that website, the family law forum, the articles and the webinars on our YouTube Channel.

Where To Start

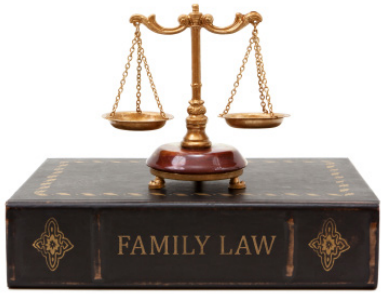
We will start with the process, which is governed by the Arizona Rules of Family Law Procedures But, we will also cover some of the substantive law related to custody and divorce, because, based on our polling, those are the most pressing needs for consumers.

Let's start at the beginning. **The beginning is before you file or**

before you're served. If you know that you are going to be facing a family law issue — because you're either facing a divorce or you've had a child out of wedlock — before you go to the court house, there's some things that you should do.

First, you should determine what your objectives are; what is most important to you? This means really thinking about what your life is going to look like in three years.

- How do you see a custody arrangement working out?
- How do you see a parenting plan working for you and your children?
- Do you want to stay in your own house?
- Do you want to continue being a mostly stay-at-home parent? Are
- you looking for financial security?
- What are your most important objectives and your biggest fears?



Gather Your Resources

The next thing that I'm going to ask you to do — after you really think about what your life looks like in the next three years, two years, one year — is to gather your resources. The process of going through a family law case is long and hard. It's a marathon, it's not a sprint. The average case lasts about nine to twelve months! You will need to really gather your resources — both emotional and financial — so that you can make the best determinations about how to achieve your objectives and set the correct expectation and strategy for how to approach your family law case.

Ask yourself these questions:

1. How do you anticipate the opposing party will respond?

2. Is it possible for the two of you to work together to come up with some solutions that work for you?

Because the bottom line is, as a family, if you're not in the family court system, you decide how your family is going to operate. There are no statutes, there is no government, there is no one involved telling you how you are going to run your family.

You can continue to have that same experience only if you and the opposing party can agree on how your family will continue to operate after your break-up or your divorce. If that's not the case, if you are not able to come to an agreement, then the statutes and rules apply and they will determine the ultimate outcome for your family.

It's usually not the best position for people to be in, so if there is any way for you and your opposing party to work it out, usually that's a better outcome for you and your children; not always, but usually.

Determine Your Strategy

By considering these issues in advance you can better come up with and execute a strategy. You don't want to go into a family court case without a strategy; without knowing what it is that you are hoping to achieve and how you will achieve it.

We have so many different tools available to us, both as self-representing litigants and as attorneys, to figure out how we're going

to move forward so that in advance; before we file anything, you'll want to come up with and execute a strategy.

One of the first decisions you need to make is whether or not to hire an attorney. As stated previously between 80 and 90% of people in family court represent themselves. If that's what you're seeking to do, you are just the majority. You are the vast majority; in fact it's not even close.

With that being said, there are too few resources that are really geared toward meeting your needs, empowering you and making sure that these life-changing events are handled in the best possible way.

Most people are happier if they hire an attorney, but the fact of the matter is that it's not true for everyone and there are various reasons why people choose not to hire an attorney. Money is the primary reason, but also people may think that they can handle it on their own or may think that it's not a good use of their funds.

I think it's really important for you to do that analysis to determine if you have the funds, if it Is a good use of your funds and if it is a good use of your funds to hire that attorney right Now. OR -- or is it a better use of your funds to map out a strategy and figure out when and if you need that attorney most, so that you can wait to hire the attorney when you need one? This is the question you need to ask yourself now. Sometimes that's a better idea for people and that's what limited-scope services are.

Under a **full-scope** model you go in, you retain the attorney; the attorney is your attorney of record, they take care of everything for you. The nice thing with that is that you get the peace of mind of knowing that an attorney's going to handle everything for you.

The downside is that the average divorce in this country costs each side $20,000 and if you're faced with the decision of ''Do I spend my child's college fund on an attorney or am I a smart capable person who can do a lot of this on my own?'' — then maybe that's the best bet for you.

This is an analysis that you need to make, but I strongly suggest that you really consider what the plan is. Don't go into this blindly; don't stumble along your path; you must really figure out what you are going to do.

Resources For Divorcing

There are other resources available to you besides attorneys that you can use either full-scope or limited-scope (i.e. only on occasion). You can also use legal doc preparers. We created Access Legal as a legal doc prep company with do-it-yourself easy to fill out forms that can connect you to an attorney when you need it, but there are many other legal doc preparers out there that offer paperwork options for your case.

People who are legal document preparers have special certification from the Supreme Court. They are not attorneys; they have not gone to Law School, but they do know how to answer questions and help navigate you through the system, which is essential. It can be so helpful when you're dealing with a divorce because it can be a very long and complicated process.

You also have lay legal advocates at various non-profits, your friends, and online forums. We've created a forum on Facebook that's for people representing themselves, or people who are going through a family court matter.

It doesn't even have to be about representing yourself. It can be just about gathering with other individuals who are going through you're going through, who can help give you support and say ''Hey, I went in front of the judge with this set of facts, and this judge, this day and here is what happened.'' Having this sort of information really makes it so much easier for you to navigate this process.

What To Expect

With that being said, let's walk through what to expect when you get into the actual case. I will use legal decision-making and child custody as our example, as we walk through the process of what to expect when you're in a family court case.

The first step is your initial filings and your initial filings include the petition, the response and potentially a motion for temporary orders along with all of the other required accompanying documents.

When you file a petition or if you have been served with a petition, you are going to make a statement on how you want each legal issue resolved. You are going to let the judge know what the potential issues are and how you would like the judge to resolve those issues.

Whether you have a Petition to Establish Legal Decision Making, Parenting Time and/or Child Support or a whole Divorce, I would recommend when you are filing these initial documents — the petition, the response — that you leave your- self the ability to change your position.

Hint – Being Vague

Consider keeping these documents a bit vague, by asking for something like an "equitable distribution of community property" or saying things like ''there may be separate property.'' If you commit in your petition that a certain piece of property is separate property and then you later find out through discovery it's not separate property, you may have boxed yourself in.

Unless you think that you are going to go through a default —

and we'll talk about default — consider keeping the statements that you make in the petition and in the response open so that, as you get more information, you can change and refine and really hone down and specify your position.

In the 9- to 12-month process that you go through typically to get a divorce, or go through a case, you may change your mind on whether or not you want to live in the house or sell the house. You may not want to lock yourself down to a position now. The risk is that an attorney at the end of the case may accuse you of being "unreasonable" for taking "inconsistent" positions throughout litigation.

In order to avoid that, consider keeping your options open early on by staying vague in your initial paperwork.

You're The Respondent

If you are the respondent, you have been served with a petition. if you are in the state of Arizona, you have 20 days to respond; if you are out of the state, you have 30 days to respond. There are a couple of ways that you can draft your response.

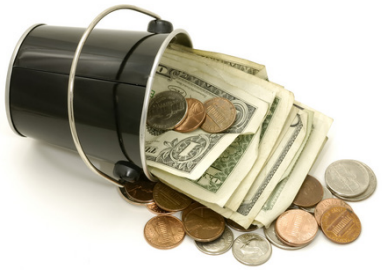
Many attorneys draft a response by admitting or denying each paragraph of the Petition. For instance, the Petition may ask for sole legal decision-making in their position in paragraph 5. You could state that you disagree with petitioner's position in paragraph 5.

But, I would recommend that you consider drafting your response more like a counter-petition where you affirmatively state what it is that you want. The reason is this: you don't want your response

to only makes sense in light of the petition; you want someone to be able to pick up your response, read your response and understand your
position.

Here is an example: Instead of saying, ''I disagree with petitioner on the issue of legal decision-making'' for instance, you instead could say something like ''Petitioner and I should share joint legal decision-making; we have always been parents to these children; we have always worked together.'' You can add some facts if you want to, or simply state your position, "we should have joint legal decision-making.''

Affirmatively state what you want. Don't set yourself up so that your response is basically irrelevant without reading the petition
as well.



A motion for temporary orders is the other document that I include when talking about 'set one' — the initial court filings — and the motion for temporary orders can be filed by either the petitioner

or the respondent along with your Petition or Response or thereafter. The motion for temporary orders will let you get in front of the judge—usually between 30 and 60 days after you filed a motion - to deal with imminent issues.

Are You In Danger?

Remember how we started with the importance of figuring out your objectives and really taking your time before you filed your documents, before you embarked on this decision? That does not apply if you are in a dangerous situation or if your children are in a dangerous situation.

If you and your children are not safe, then you may not have time to come up with a strategy right now today. You may not have time to wait and think about how really you want your life to look in three years. Let's get you safe first and foremost, then we will work on our plan and that also ties into what we are talking about here at the motion for temporary orders.

An emergency order is separate from a motion for temporary orders. An emergency order can be filed — let's say for sole legal decision-making if your child is in a dangerous situation — without an order in place. If you qualify for an emergency, it will not take you 30 to 60 days to get in front of the judge; you will be granted an immediate order.

To file for an emergency order, you go before the judge ex parte (without the opposing party having notice), and you ask the judge for an emergency order, because if that emergency order is not granted, there will be irreparable harm to you or your children. It is something to consider; and it is something that is available to you in the most dangerous situations.

But the motion for temporary orders is not for emergency situations. It's for situations where you need to figure out during the pendency of your hearing;

- what the parenting plans are going to be
- or, you need temporary child support and you can't wait 12 months until the judge takes the final decision on child support
- or, you need temporary spousal maintenance
- or, you need to know who's going to pay the bills
- or, maybe you want to put the house on the market.

There are really an unlimited amount of things that you can ask for in your motion for temporary orders, so consider whether or not that is something that you need.

You can get all the documents you need on the Access Legal website.

There are filing fees that are required for both petitioners and respondents. If you are unable to pay that filing fee, you can ask the court to defer that filing fee. That's something to keep in mind. You shouldn't let the inability to pay the filing fee stop you from filing, but you should consider what it is that you're asking for and what it is that you are writing down and drafting to the court before you file.

How NOT To Ask For Money

I've seen the court really come down on women who filed a petition asking for her $2000 a month spousal maintenance for the rest of their life. Some judges are offended by that, so if you leave yourself open to "I need spousal maintenance to meet my reasonable needs" and you don't define it and you don't ask for how long, you give yourself time to really figure out if what you're asking for is reasonable, who your judge is and how spousal maintenance fits into your overall strategy.

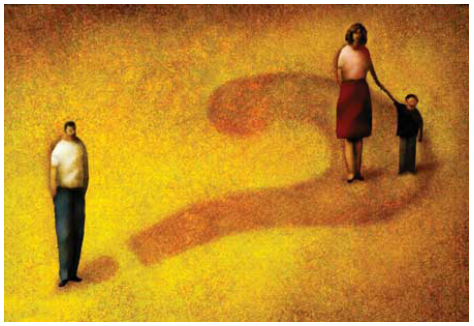
The Strategic Default

In the event that you think your opposing party is not going to respond — either because they are out of the state or they are MIA ('Missing In Action') or they agree with everything — you can consider filing for a default.

If you know that you want to file for a default — and this can be a strategic move that you and your spouse or your ex consider — then what you needed to do is draft a very specific petition that also includes your parenting plan and explains exactly what you want. You then serve the other party.

If the other party agrees, then you can go forward with the default judgement. The opposing party avoids paying a $268 response fee and it's a strategy for people who agree. There's no way in Arizona for you to get an uncontested divorce. Someone must file a petition.

Establishing Paternity



It's the same thing with establishing paternity and legal decision-making.

Legal decision-making is legal custody. It's who makes the major decisions for the child — where they go to school; whether or not they get on medication; or get a surgery that might not be an emergency surgery; their religion and personal care decisions.

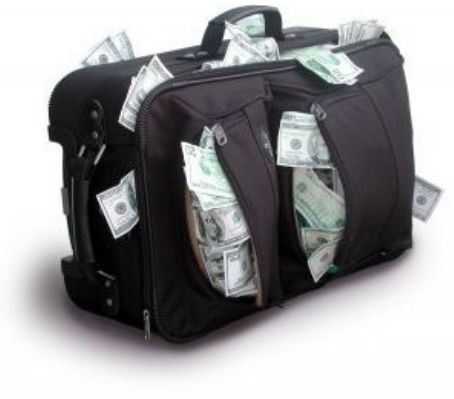
Most of the time, the courts prefer joint legal decision-making, which requires both parents to talk and make decisions together. That's not always the case and there could be very good reasons why there should not be an award of joint legal decision-making. So don't think that you have to ask for joint legal decision-making. I'm seeing a lot of pressure being put on people.

They're being told "Don't even bother asking for sole legal decision-making." And that's a mistake. You really need to look at your facts and apply the law, and then determine what's going to be most appropriate for you.

Goodbye Visitation

Legal decision-making is separate from parenting time and Arizona has done away with the term 'visitation.' No parent is given visitation. Each parent is given parenting time. And we have statutes in place that require very specific rules for

the parenting plan that must be in place. It's not ok for the two of you to come up with a parenting plan that is "so and so will be granted liberal or reasonable parenting time."



The courts and the statutes require that you have a specific parenting plan in place that deals with 'vacations,' 'holidays,' 'transportation,' and 'specific days' and times for each parent to have parenting time.

With that being said, there is also a preference for maximizing parenting time with both parents, when you have good parents, when you have safe parents. If that's not the case, then you do not need to feel pressured into entering into an equal parenting time arrangement; if that's not what best for your children; that's not right in your circumstances. We really do have to look at that case-by-case basis. With that little aside, we'll go back to the default.

Default

If you have served the opposing party and they have not responded — they have 20 days to respond in Arizona; 30 days to respond if they are out of Arizona — then you can file an application and affidavit for default. They get 10 more days to respond and you serve them with that application and affidavit of default.

At that point you can request either a hearing — if you have children—and you would go before the judge for a default hearing or you can submit paperwork—a decree for the judge to sign — if there are no children involved.

Be aware, one more piece of time frame to keep in mind is that there's a 60-day waiting period for divorce, so you can't file really your application and notice of default or submit your decree to get it signed before that 60 days.

That's something to keep in mind when we are also considering the 20 days plus the 10 days; we've got a factor in those 60 days as well. A hearing is usually required when there are children involved.

So what that looks like is you call the court; you make an appointment; you and a bunch of other people show up on the day of your default hearing; you wait in line; you go before the judge. The judge will compare the petition and the decree, so you have to bring a decree with what you want to have happen.

The decree must match what you've asked for in the petition, because the person who was served — the respondent who did not respond — deserves to know what it is that they have waived their rights to by failing to respond.

We cannot have a very vague petition that you then go get a default judgment on. That's something to consider.

What we might have to do in that case is amend your petition, make it more specific, then ask for a default. After these initial filings, you might do the default, you might not.

Don't go through default and your opposing party goes ahead and responds; then the next phase of your divorce — really phase two or phase three (if you consider a default phase two) and then the discovery and a disclosure phase three.

Disclosure And Discovery

In family court, disclosure and discovery is really not optional; it is mandatory. That means if you're going to use an exhibit, if you're going to use a witness, it must be disclosed and Rule 49 sets out the mandatory minimum disclosures.

The rule is lengthy; it's complicated. We created a fantastic chart for you that you can check out. It's hosted on the Access Legal website. It shows you exactly if parenting time is an issue, here's what must be disclosed; if there is a protective order in place for anyone that lives in either household, here is what must be disclosed; if there's criminal records, here's what must be disclosed; if it is property, here's what must be disclosed. It's an excellent chart for you to review.

This lets you know, not only what your obligations are in disclosure, but what you can expect to get from the opposing party.

This brings us to the next topic on disclosures and discovery and the rules of evidence. In family court, the rules of evidence are relaxed. That means the same rules that you have in civil court — objections to hearsay or authenticity of documents — don't apply in family court. In family court the general rule is that any evidence that's relevant will be admitted. That is, unless a notice of strict compliance is filed.

Be Careful With "Strict Compliance"

A notice of strict compliance is not a request to the court; it's putting the court on notice that the rules of evidence — the civil rules of evidence — will be in effect. I would advise you to think long and hard before filing the notice of strict compliance. It makes it more difficult for you to prove your case. What that means is that instead of submitting a police report as evidence, you need to actually subpoena the police officer who has to come and actually testify because that's the best evidence; the best evidence of what happened is not the report, but the actual witness who saw the event, so that's just something to keep in mind.

If the opposing party or the opposing party's representative and their attorney files a notice of strict compliance, we'll need to do a crash course for you on the rules of evidence. Please check the Access Legal website for any updates on this.

Also, if that's something that you need to know, please give our office a call for a free first-time consultation.

Discovery Tools You'll Need

You'll need to look at what "**Discovery**" tools you have, specifically Rule 49. Let's say you need access to their bank records and they're not handing them over or you know they're hiding assets or you think there might be something really terrible—like child pornography or something like that — there are discovery tools that you can use in addition to the Rule 49 disclosures.

The discovery tools are interrogatories which are questions that are asked and served upon the opposing party. They must answer them within 40 days. There is a set of uniform family law interrogatories (i.e. written questions) that are fantastic. I mean, they are fantastic!

They ask for things like -- naming every account you have, naming all the people who live in your house and any criminal record they have. It's extensive; it's great!

You can get it on the Access Legal website.

You can also serve **non-uniform interrogatories**. Non-uniform interrogatories are questions that you make up. For instance we thought the opposing party in one of my cases was hiding rental income, so we created a non-uniform interrogatory that said "identify each and every house you own, who lives in the house, how much the mortgage is and what is paid in rent." That's not a uniform interrogatory, it's a non-uniform interrogatory and you're limited in the number of those that you can use, but they're very powerful discovery tools.

The next discovery tool you have available to you is the **request**

for the production of documents or things or items. You can request someone's computer. You can request that that computer be imaged by a forensic analyst who then goes through and searches for things, you know, in a child pornography example that's a reason we would want to get their actual computer or image their computer or their tablet.

We can also do that with someone's phones. We can look for bank accounts. You can request specific items, lots of specific items, using this request for production of documents. And again what we'd want to do is think back to a strategy, think back to what we must prove and then request what we need to using these discovery tools.

A **request for admissions** is a separate document that goes out and says "Did you do XYZ?" They have to lock down yes or no. And why do you do these interrogatory and these requests for admissions? Because you lock down their answers and you can use this as evidence and you can use it to impeach them. And impeachment means you're proving them a liar; that's what it means.

We want to start with these tools and using these tools and gathering our evidence soon. There is a reason that I put this in the process right after the filing of the original and initial documents. **You do not want to wait.** The reason is that the same information is used not only for trial prep, but for negotiation and for settlement. It's information that you're entitled to.

A **subpoena** is a little different because it's like **a request for production of documents** or a request for a witness that goes directly to the third-party: a bank, a witness, a school, any third party who has information that you need.

In the family court there are a series of prehearing conferences that are designed to help facilitate settlement, narrow the issues and figure out what the case strategy is going to look like.

Resolution Management Conference

A resolution management conference is an RMC. It's typically scheduled when there's attorney, sometimes if there's no attorney. A resolution management conference is about half an hour. You have to file a resolution statement prior to this.

You want to be pretty specific in your resolution statement about exactly how you'd like the case to be resolved. You can't do a good **RMC statement** without the information that you gathered during discovery. How do you know how you want to specifically

split the assets if you don't know exactly where they are or exactly who owns them or exactly what the terms of the interest rate are? That's why discovery's are so important.

The resolution management conference is in front of the judge that is assigned to your case at the court house.

TIP

One quick thought on this: you have the ability to change your judge once as a matter of right before you go in front of the judge. If you are assigned a judge that you do not want for your case, you need to file a notice of exchange of judge before the RMC.

At the RMC you tell the judge how you want things to move forward. Not only do you tell them how you want the substantive issues to be resolved — for instance, I want Joey to go to X school or whatever kiddo issues you have going on, or money issues — but also you want certain experts appointed; do you want to go to a parenting conference; do you want to go to an ADR; do you want a comprehensive family analysis; do you want a drug testing for the other party?

The RMC is all about what sort of things you need the judge to order, and this is the time to ask.

Early Resolution Conference

An early resolution conference is different. It is set with conciliation services. You go in front of a third-party mediator. It's you and the other party; usually this is set when there are no attorneys, but sometimes when only one side is represented.

One time I got to go and I was able to really help my client facilitate a fantastic settlement. It's set for three hours rather than the half hour.

So it's different from an RMC. You're not in front of the judge and you don't have to file an RMC statement in advance.

But you're going to want to bring your evidence, because that's going to help you negotiate.

Alternative Dispute Resolution

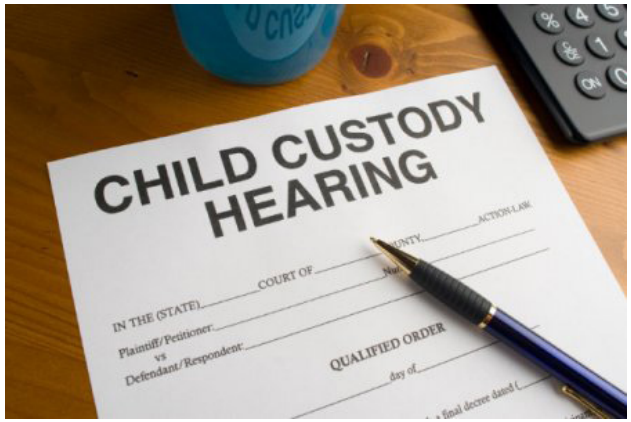
An ADR stands for alternative dispute resolution. This is usually a judicial settlement conference. This is a three-hour conference that is assigned to, not your judge, but a judge pro tem. They are usually an attorney or someone who has a lot of experience in family law.

Their job is to help facilitate the settlement.

Before you go to the ADR, you submit a *confidential* memorandum to that judge pro tem, outlining all of your positions. This is like your **pre-trial statement**. You are going to want to have all of the information that you need going into it, so again this is why discovery is so important.

The other prehearing conference that you might get is a return hearing or as a status conference. That is a little more loosely defined; sometimes they take evidence, sometimes they don't. It's just an opportunity for you to talk to your judge —sometimes it's telephonic, sometimes it's in person — so that you can all come up with an idea of what's going to happen.

For instance, maybe you're going to set a case for trial, maybe you're going to go over the remaining outstanding issues etc. etc.



Negotiations

Prehearing conferences are designed for a lot of different purposes and we just talked about those, but the other thing to consider here throughout all of this is *negotiations*. You should make a good-faith effort to look like you are negotiating. It's important. If you don't, you are exposed to paying the other party's attorney's fees.

Unless you're in a position where you are afraid of the opposing party, you should try to engage in negotiations as much as possible. With that being said, there is many ways to do it.

When the other party is SCARY

If you are afraid of the opposing party, you can engage in negotiations in writing or via attorneys. You don't have to do it yourself; it doesn't have to be in person. And when we do mediations or ADR, alternative dispute resolutions or judicial settlement conferences, we can absolutely have the parties be in different rooms where they never see each other.

Another option is that someone — one party — shows up an hour earlier than the other party so that you're never, ever seeing each other. It is absolutely an option.

Trial Preparation

Now, all of this is kind of trial preperation, but it's also negotiation prep and case prep and helping you to figure out what it is that you want. When you are engaged in trial prep, here's what you're looking at: you need to identify all of the remaining issues that have not been settled — property divisions, spousal maintenance, parenting time, child support.

Once you've identified the issues, then you need to look at the law to figure out the elements of each issue — for instance child support.

Child support is calculated pursuant to a calculator. The elements of child support are mom's income, dad's income, childcare expenses, healthcare expenses, any extraordinary expenses.
You need to drill down into the elements and make sure that you have the information that you need to prove each of those elements.

How do you prove mom's income, dad's income, healthcare expenses? This is all information you're going to need in order to prepare for trial and prove your case.

You'll need to look at the statutes, which you can find under Title 25 of the Arizona Revised Statutes. That's all of the family law statutes. If you look at each one, you know, the one on parenting time will give you all the factors that the judge will consider when determining what the appropriate parenting time arrangement is.

At this point you are gathering legal information and analysing that legal information and applying your facts to that legal information.

Get help; consult the statutes, lay legal advocates, people who have been doing this before, doc preparers, attorneys; do what you need to do to make sure this is your very well-prepared and you can articulate the facts and have the evidence that the judge actually cares about.

The Pre-Trial Statement

It identifies all of your issues, gives the procedural history and background of the case, cites the law, applies your facts to the law and incorporates exhibits.

The pre-trial statement is the most important document in your entire case. I cannot emphasize enough how important this document is.

Last week I had a hearing with a client. The other side was represented as well. We had submitted to the judge a joint pre-trial statement laying out here's what's happened in the case, here are the outstanding issues, here is the law, here is how we applied — each of us —each attorney applied our facts to the law and we gave it to the judge in advance.

When we walked in for trial that day, the judge had written up for us his presumptive findings. He had already drafted his ruling. He called us back in chambers. He said ''Look, I'm open to changing my mind once I hear a testimony, but here's what I'm thinking I'm going to do.'' It was incredible! This tells you how important this document is.

If you pay an attorney for one piece of your case, I recommend you pay them to do a prehearing statement for you; take your exhibits; apply your exhibits. The reason is you're going to use this as an outline for everything.

We have a form through Access Legal that can walk you through the questions that will help. And we'll work on making that better.

You should think about what are you going to use for witnesses and exhibits? How do you determine what you're going to use, or who you're going to use? You look at your pre-trial statement.

Your pre-trial statement shows you what facts you must prove. If you must prove dad's income, you know that you need an exhibit that shows dad's income.

If you have to prove that dad never showed up to pick up little Johnny on time, then you're going to need exhibits that show that dad never picked up little Johnny on time or witnesses from the childcare center that can say that dad never picked up little Johnny on time.

The Cheating Ex

If there are facts really important to you that cannot be applied to an element, you don't get to use them. So if there is something that is very important to you, for instance, your ex cheated on you and you're ticked off and you want the judge to know; I don't blame you, it's understandable that you are upset and you want the judge to know, but we have a no-fault divorce state, so it's really not relevant unless we can show waste — community waste of assets.

If you put in a legal argument an analysis related to waste, then you can bring up the fact that your spouse cheated on you and spent all this money that was half yours.

You must figure out a way to get the facts that are important to you to apply to an element of a legal issue.

Trial Procedure

Trial presentation works like this: the petitioner begins, and the petitioner will call his or her first witness — usually that's you — and you will testify as to what's important. How do you know what to testify to? **You testify based on what's in the pre-trial statement**, *because if you've done a great pre-trial statement, your pre-trial statement is exactly what the judge needs to know. This is your guide for your testimony.*

That is also the question you're asking the other party. That is your outlined new use and trial, because that is what the judge has used as evidence by the fact that the judge brought up a draft agreement based on our pre-trial statement.

After you've offered your testimony (if you're the petitioner) the opposing party has the ability to ask you cross-examination questions. Answer these questions as *quickly and succinctly and without animosity as much as you possibly can.*

Best Behavior

You want to be on your best behavior. Judges want to feel like you respect them and respect their courtroom. It's a place that is more traditional than most, so some people are really shocked by the level of respect that is expected by the judge and the level of decorum that's expected of you. Remember, it is real; you have to follow it, and when you do, it will help you.

The opposing party is going to ask you cross-examination questions. You have the ability to redirect or re-clarify anything based on what they asked you. You can do that for every single witness.

After you're done with your side, you call your next witness; you ask them questions; the opposing party asks questions, and then you get to ask clarifying questions.You do that until you're done presenting your case.

You should use the exhibits to bolster the testimony. The exhibits really don't and cannot speak for themselves, so each element of evidence, or each exhibit, must be authenticated, which means you must say ''I'm looking at father's pay from this month to this month, which says bla bla bla bla bla.'' *You have to tell the judge what the exhibit says*; then you can show the judge the exhibit.

Then you need to offer the exhibit — and you do that by saying ''I offer to admit exhibit X''— so you're going to submit to the court, let's say, 30 exhibits prior to trial. You're going to give that to the court, and to the opposing party.

Some judges want a copy, and some don't. You can call the court and find out exactly which judges want a copy of the exhibits and which don't. In order to have the exhibits actually looked at by the judge, you're going to have to offer to admit the exhibit.

At that point the other party has the ability to object by saying ''I object.''

What are the bases for objection?

If an exhibit wasn't disclosed; or was not previously disclosed you can make an objection for **Irrelevance**. Sometimes an exhibit doesn't say what the other party claims it says. For instance, in a case I was working on recently, the other side was trying to put in exhibits that had nothing to do with the case; information that had to do with his wife's grandparents' money that they earned and it didn't have anything to do with the case. The other party was trying to argue that it had to do with showing that he worked for them, but it didn't show that he worked for them, so we objected.

The objection was sustained, which means 'yes, I agree with you,' and the exhibit was rejected.

If an exhibit is not admitted, the judge doesn't look at it and quite honestly, the judge most likely will not look at your exhibits before you've gone into trial.

So as you go through your case, and you've presented your witnesses, you've presented your evidence, you've offered to admit your exhibits, then at that point, you're going to **rest your case**.

The opposing party does the same. Most often there is no closing argument or opening argument, although you might be able to

submit a closing argument in writing — a closing brief to the court — and that's something you are probably entitled to do. You can ask the court or you can simply do it.

What to expect?

You've finished, they've finished. It's now time for everybody to go home. You want the court to give you a ruling. They're probably not going to give you a ruling. Most likely the judge is going to take the matter under advisement and you're going to receive a written ruling sometime between 30 and 60 days later. During that period of time, the status quo remains.

If there are temporary orders in place, they control. You'll just continue doing what you're doing. Now, let's say you finally get the ruling and there's something horribly, terribly wrong. What are your options? Motion to clarify, motion to reconsider, an appeal or Rule 85 motion to set aside. There are good reasons to do this.

For instance in a divorce that I was working on about two years ago, we got the decree and the decree did not divide all of the marital property, so it wasn't clear who owned the business or the houses or, you know, the boat and the cars and they hadn't been divided, so that was a really good reason for us to file post-decree motions regarding the actual decree—it does happen and there are other reasons you want to do that.

Questions

"What if you're self-representing your own witness?"

Well, you're not asking yourself questions, but you are offering testimony. You want to offer the testimony that are the facts that support your position under the law. That's how you know what you need to testify to.

"How do you get the other party to reveal finances if they refuse and you don't have a lawyer?"

We use Rule 49; we use the **discovery tools**, and then we file a motion to compel. Judges don't really like this motion to compel. It takes a long time to get their attention, so we need to start early and often, but we will file with the judge a motion to compel saying they're not participating. If there are enough financial resources, then we might even ask for it to be applied.

They have judicial authority and the ability to gain discovery for you, so that is something to consider as well.

"Is the other party entitled to larger child support because she reported lower income, but the reported income isn't actually what she makes? Can I use the interrogatory to help point this out and negotiate lower child support?"

Yes, what you're going to do is argue that point. The child support guidelines are actually extensive, so while it seem really simple — you just put the numbers in —they are actually really extensive and they define what is income, what is underemployment, when is someone underemployed, when should they be imputed higher income. And those are things that can be done.

"I'm in the middle of a custody hearing with a judge

and he's horrible and very unfair. Can I request to change judges in the middle of the trial?"

Nope, you cannot. And unfortunately this does happen. You have the right to change judges *only at the beginning of your case*, before they've heard your actual case. So, unfortunately you're stuck. At that point is probably time to re-strategize and figure out what you need to do; maybe you get an expert involved. You need to really work with somebody to come up with the best strategy in order to move forward.

"How do I enter a pre-nup as evidence?"

You submit it to the court as an exhibit in advance. And you need to disclose that to the other party. Anything you want to use as an exhibit or witness must be disclosed in detail. You need to do a disclosure statement pursuant to Rule 49. Look at the chart that we referenced earlier, which is on the Access Legal website. We also have disclosure statements on the website. The website walks you through the questions so that you know what you need to include, and what you need to disclose.

"If you amend your position, do you have to reserve the other party and does the 60-day start over?"

The 60-day waiting period doesn't have to start over, because your waiting period for divorce relates back and any amendment relates back to your original petition, but you do have to serve them with the amended petition and they still do have time to respond.

"When did the court start requiring specifics? Has it always been that way?"

Let's assume that you're asking about a default judgment and the initial petition for divorce. And let's say, the petition says "I want the opposing party to have reasonable parenting time," and then you come up with a parenting plan in front of the court that says the decree that you are submitting for default says that the other party gets parenting time on Mondays, Wednesdays and Fridays from 2 to 4 — they haven't had the ability to respond to that and that's why that's required in order to get a default judgment.

"Does the petitioner get to see the answer from the respondent?"

Yes. The petitioner does not have to be served with the answer, but the answer has to be mailed to you and another couple of quick facts that you should know, there is something called an ECR—an electronic court record. Every single one of you should register for an ECR account that will allow you to go on the court website and see exactly what has been filed, what decisions the judge has made.

Sometimes you don't always get the information that you're supposed to get from the opposing party, so register for an ECR account and if you have questions on how to do that, there's directions for you on the Access Legal website. But in short, yes, you will get to see the answer.

"When you get the dissolution papers filed, does one parent immediately become the residential parent?"

There's no real consensus on this idea of residential parent. What does happen when you file a dissolution is that a preliminary injunction goes into a fact and the preliminary injunction says that there can be no major changes; you now cannot take that child out of state without permission; there cannot be any spending that is unusual or outside your typical scope of spending. But no, there is no immediate kind of preference for one parent over another parent.

"I've been separated about for years and did not receive any monetary support."

There's a blog on the Modern Law website that has to do with exactly that, and what happens to your rights for things like spousal maintenance and support when you do not enforce them. That goes into a lot of specifics, but the short answer is that if you don't ask for it, you don't get it. And it underscores the importance of what we already talked about in terms of having a plan up front and knowing a general direction of what you want from your divorce.

"What can I do to maximize the request for temporary orders?"

This is a key question. You should know that your temporary orders request *cannot be as vague as your petition or your response*. If you're asking for temporary orders—let's say temporary spousal maintenance or something like that, temporary child support — you need to be very specific and ask for what you need in that moment to get by.

You need to maximize your request. You're going to want to say something like ''the opposing party has always paid for everything; our bills are X; I need X amount of money in order to continue paying the bills.'' That is the extension of the status quo. You're going to have your best bet at getting a temporary order if it is an extension of the status quo.

"What's the benefit of filing a notice of strict compliance?"

If someone is accusing you of being a very bad person and you want them to be held to the highest standard of evidence where they can't just bring in hearsay — you want actual evidence — that might be a reason that you would consider filing a notice of strict compliance.

• DISCLAIMER •

In the context of this ebook, I'm offering legal information to empower you; I'm not able to give you legal advice. I'm not your attorney. I don't know everything that's going on with your case and so the information that I'm giving you here is really just so that you understand the general situation and can decide how you want to proceed.

You have the ability to contact my firm; we do offer free consultations. I can offer you more specific information that way, but the information that I'm giving you here is not considered legal advice. For that, you'll need to consult your attorney.

How To Contact Us:

Billie Tarascio, attorney
One North MacDonald, Suite 201
Mesa, Arizona 85201
602-457-5798

The End