

fall
2020

FAMILY LAW NEWS

this issue...

- 1 From The Chair
BY ANNALISA
MOORE MASUNAS
- 3 Beyond Bell-Kilbourn and Drahos –
Disclaimer Deeds and Community
Liens in Real Estate Cases
BY WILLIAM D. BISHOP
- 4 Navigating the COVID-19
Pandemic as a New Attorney
BY TIMOTHY RADOVICH
- 9 Crossover between Family Court
and Probate Court: Part II
BY KATHLEEN STILLMAN
- 14 Protecting Domestic Violence
Victims: Where Family Court
Proceedings Impact Immigration
BY ERENA BAYBIK
- 19 Volunteer -
How to Get Connected
- 26 Family Law Hearings
with Microsoft Teams
BY HON. GREG SAKALL,
PRESIDING FAMILY LAW JUDGE,
PIMA COUNTY SUPERIOR COURT
- 30 Hot Tips and Case Law
- 31 Important CLE Dates
- 32 Contribute to Future
Issues of Family Law News



Published by the Family Law Section of The State Bar of Arizona. Statements or opinions expressed herein are those of the authors and do not necessarily reflect those of the State Bar of Arizona, its officers, Board of Governors, Family Law Executive Council, the Editorial Board or Staff.



FROM THE CHAIR

ANNALISA MOORE MASUNAS

Family Law Practice

IN MIDST OF COVID-19

BY ANNALISA MOORE MASUNAS

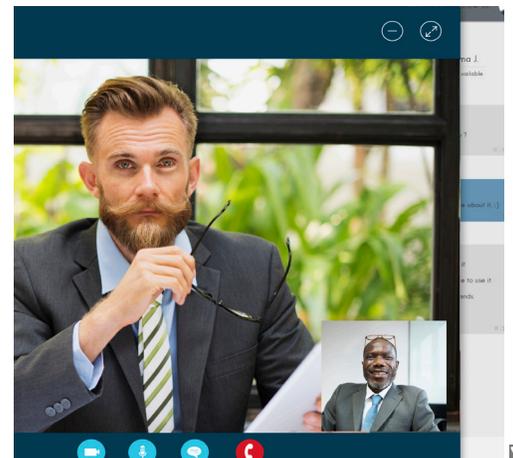
WE HAVE ALL BEEN impacted by COVID-19, both personally and professionally. The practice of law since March 2020 has transitioned drastically,

and we are all now using remote technologies in our daily lives. Where we once were focused on in-person court hearings and appointments with clients, we now have video hearings and appointments, more telephone calls, and few to no in-person hearings or trials. While some counties in Arizona have transitioned back to in-person hearings, many have not. I have not been in court in person since early March, and

>
...the Court uses Teams, we do too, and we teach our clients how to use it.

do not have anything currently expected to go in person.

I have participated in multiple hearings via Microsoft Teams, and that is my go-to platform for client meetings. While some clients come in when we need an original signature, most appointments are still remote. Because the Court uses Teams, we do too, and we teach our clients how to use it. For any important hearing, we have the client come in the office, with a setup that allows for social distancing, participating in the virtual hearing with separate video, but with audio that can be heard well by the court (without masks for most). **Please remember to act and appear professional during all video hearings and conferences.**



Just because it seems more relaxed if you are in an office or someone is at home, it is still court and proper decorum is required.

In this COVID-19 age of ever-changing recommendations and health concerns for many, it is important to stay on top of the latest in technology needed to adapt your practice. That technology includes devices, internet connections, security, how to best manage audio and video, and other considerations for video conferences. While in-person CLEs are on hold right now, please stay on the lookout for virtual programs that offer training to help improve your capabilities in this area. The Pima County Bench and the AAML is putting on a three-part Teams 101 training series. The Family Law Section is planning some virtual training as well. For Better or For Worse is scheduled for January 27-29, 2021, and it will be entirely remote. I encourage you to take advantage of all the training you can find.

Make sure you know the current administrative orders that are in place for your county.

We have statewide COVID-19 parenting time guidelines in place, and administrative orders are being updated as appropriate and as things change. These orders are important to know for your practice and they impact the advice that you give your clients.

Now is a great time to explore mediation and settlement alternatives. Because most cases are not being scheduled for hearings or trials that allow for much in the way of substantive presentation, settlement is more important than ever. Many judges and other attorneys are scheduling settlement conferences and RMCs to help settle cases, and you can request their assistance early on in a case. Those of you who act as judge pro tems are very much appreciated; we recognize that volunteering takes time away from your own practice, but it is essential to helping other attorneys settle cases.

Please remember to thank your pro tems, and treat them with the same respect and courtesy as you would a judge in court.

COVID-19 has impacted the mental health of many, and we are seeing it with both clients and others in our lives as well. In addition to the mental health struggles, clients and others are also struggling with physical health, financial difficulties, and other issues during COVID. ***Pay attention, have conversations with people, and listen to them, because stress levels are high.*** Realize, too, that people have different views about COVID-19 and what is going on in our world today. You may or may not

agree with someone's views, but you may not really know what they are experiencing. While we are there to help with our client's family law needs, be ready with recommendations for how people can get help in other areas too.

This is the time to remind clients how important it is to resolve cases, and for those with children, how critical it is for parents to work together for the benefit of their

children. Parents need to work together now more than ever, as children are faced with not only difficult family situations if their parents are divorcing or separating, but their worlds are not the same. They may not be in school in person full time, and they may be in school online. They may be separated from friends, they may not have activities, and they may not be able to see certain family members. Some children are doing just fine, while others are struggling. Parents who are working together can better navigate these times for their children.

I wish everyone the best as we all continue to navigate during this time of COVID-19. 

“

... CLES ARE ON HOLD RIGHT NOW, ... STAY ON THE LOOKOUT FOR VIRTUAL PROGRAMS... THE PIMA COUNTY BENCH AND THE AAML IS PUTTING ON A THREE-PART TEAMS 101 TRAINING SERIES. THE FAMILY LAW SECTION IS PLANNING SOME VIRTUAL TRAINING AS WELL.

”

ANNALISA MOORE MASUNAS is a partner in the Tucson firm of MOORE, MASUNAS & MOORE, P.L.L.C. Annalisa is a fellow of the American Academy of Matrimonial Lawyers (since 2004), and is a certified specialist in family law (since 2002). She was recognized by Best Lawyers in America in 2018-2020.



BEYOND BELL-KILBOURN AND DRAHOS- Disclaimer Deeds and Community Liens in Real Estate Cases



I DRAFTED AN ARTICLE for the For Better or For Worse AAML / State Bar continuing legal education program held in January 2020. Such was included in my “hot tips” presentation at the seminar. The Family Law Section Executive Council asked that I make the article available to the membership as such is intended to help family law practitioners understand when disclaimer deeds may be challenged, whether a contract or premarital agreement analysis applies, and when formulas such as those set forth in the **Drahos** and/or **Barnett** cases do not make sense (i.e. when they do not treat community and separate property capital contributions

^ ...the burdens of proof applicable to disclaimer deeds (depending upon when they are signed), the types of contributions that may be included in a community lien analysis, and the burdens of proof applicable to disclaimer deeds and community equitable liens.

equally). My article also addresses the burdens of proof applicable to disclaimer deeds (depending upon when they are signed), the types of contributions that may be included in a community lien analysis, and the burdens of proof applicable to disclaimer deeds and community equitable liens. The article also addresses potential defenses and offsets that practitioners may make in opposing community lien claims. The full article may be viewed at the following link: <https://www.bishoplawoffice.com/wp-content/uploads/2020/10/Disclaimer-Deeds-2021.pdf> **FL**

WILLIAM D. BISHOP has been a longstanding member of the Family Law Section Executive Council. He is a Certified Family Law Specialist and Fellow of the American Academy of Matrimonial Lawyers.

Navigating the COVID-19 Pandemic as a New Attorney

Law school deconstructs and rebuilds the way we approach problems, but the actual practice of law demands a practical understanding and handling of cases.



ONE OF THE HARDEST, early lessons for a new attorney is the large distinction that exists between what we are taught in law school and the everyday

realities of being a lawyer. Law school deconstructs and rebuilds the way we approach problems, but the actual practice of law demands a practical understanding and handling of cases. Communications with clients

and opposing counsel, filing and serving documents, and applying black letter law to real life circumstances – these are skills that cannot be easily taught in the classroom. And while books, guides, and studying may help prepare you, the fact is, there is no comparable substitute for the real thing: sitting in your office for the first time while observing and learning from the seasoned attorneys around you.

I was admitted to the Arizona State Bar in October 2019 and began at Fromm Smith & Gadov in January 2020. I was inexperienced and excited to have landed my dream job and learn from some of the best in family law. Most of my initial learning and training



came simply from listening and observing. I sat in on initial consultations with new clients and learned how to approach the problems clients face in family law. I accompanied attorneys to court and learned the procedural expectations of the courtroom and observed the small idiosyncrasies of strong courtroom demeanor. I was just where I needed to be and had every resource available to become a great attorney.

But just as my career was getting underway, our work lives were turned upside down as the COVID-19 pandemic upended the whole country. In the span of just a few days, everyone was suddenly adjusting to new work environments. Instead of being surrounded by my mentors and resources, I was isolated at home and limited to a laptop and whatever

guidance I could receive from our office file bank and the occasional email or phone call. Our office was just one of many that had to make on-the-fly adjustments to working, communicating, and coordinating with each other on an entirely remote basis. And I was only one of the hundreds of young attorneys to have the beginning of their careers interrupted in the most unexpected of ways. At the time, having to suddenly learn how to be a lawyer while detached from our workspace seemed like an impossible task.

The new realities of working during the COVID-19 pandemic have now become more of a routine than an adjustment. Socially-distanced work spaces, mandatory masks, and offices at an enforced 25% capacity have become the new normal. The attorneys in our office have been fortunate in that we have been able to transition back to being at the office nearly full time – but others have not been so lucky. Many firms and offices are still working remotely and will be doing so indefinitely. And with the July 2020 Bar Exam results having just been released, soon the next generation of lawyers might have to

“
... BUT JUST AS MY CAREER WAS GETTING UNDERWAY, OUR WORK LIVES WERE TURNED UPSIDE DOWN AS THE COVID-19 PANDEMIC UPENDED THE WHOLE COUNTRY.
 ”



...one of the hundreds of young attorneys to have the beginning of their careers interrupted in the most unexpected of ways.

begin their careers out of office and have to learn the intricacies of practicing law from the confines of their homes. There will never be a perfect substitute for beginning your training in the office – however, these are a few ways in which young attorneys can help bridge the gap for their training while in the early stages of their careers and adjusting to working remotely. These tips may also help experienced attorneys as they train new attorneys in their office.

Utilize Video Conferencing Whenever Possible

The use of video conferencing applications has become so prevalent in the past six months that “Zoom” is now practically used as a verb in the workplace. But while video communications are great for meetings, they can also be utilized as an effective tool for training. Learning comes not only from simply reading

“

A SIMPLE WAY OF RECREATING THE DIRECT CONTACT, THAT IS LOST IN SOCIALLY-DISTANCED AND REMOTE WORKING, IS BY UTILIZING VIDEO CONFERENCES WHEN COMMUNICATING WITH YOUR SUPERIORS.

”

instructions, but also by interacting with whoever is providing advice and direction. This, of course, is substantially limited when in-person meetings are not available and most constructive criticisms and feedback come via email or telephone call. A simple way of recreating the direct

contact that is lost in socially-distanced and remote working is by utilizing video conferences when communicating with your superiors. There is no substitute for real interpersonal contact – and while we are limited, it can be helpful to recreate real meetings and promote face time whenever possible and reasonable. Crucial to the learning experience is the

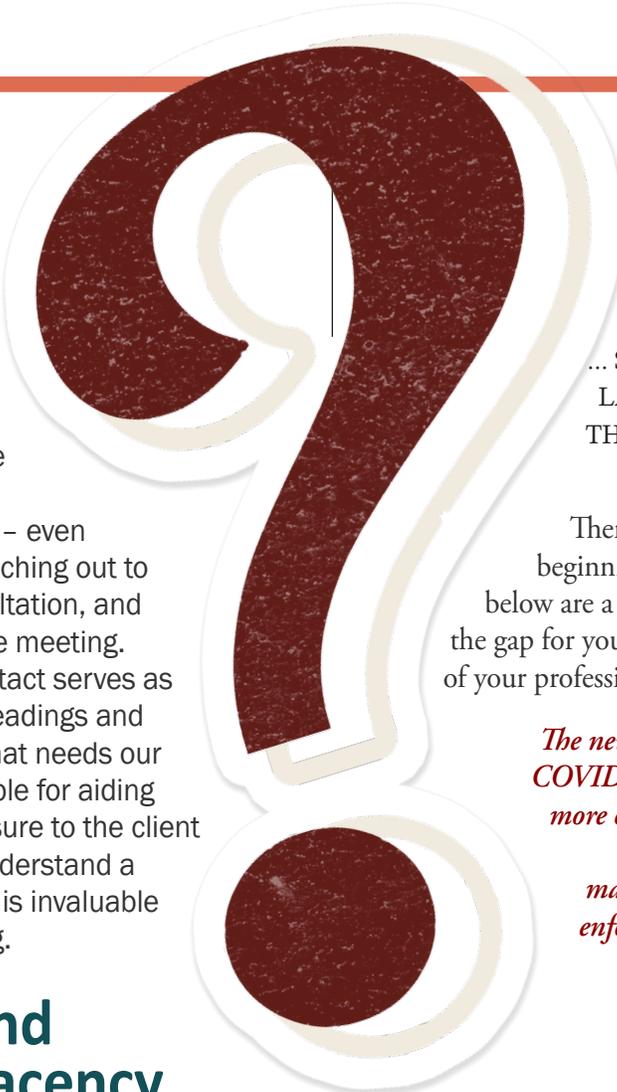
interaction between student and teacher, and a video conversation can sometimes provide much more than a written email by encouraging a more collaborative process where instructions can be freely discussed. Although possibly more time consuming than an email, video conferences can facilitate a more thorough learning and understanding of what is being taught.

Get Involved with Initial Consultations

Often when young attorneys are just beginning their careers, they will play the role of assistant to other attorneys by working on individual assignments for different clients, rather than handling clients on their own. While this is a great way to learn, it can occasionally result in the young attorney not knowing enough about the client as an individual, from both a personal and legal perspective. Initial consultations remind us of the unique circumstances and situations every client brings to the table. Given the emotional nature of family law, we have a lot to gain from listening to someone seek



counsel and explain what they are going through. Clients consult with family law attorneys for very intimate, vulnerable reasons, and we should be exposed to this whenever possible. So, even when working remotely, you should always be proactive about getting involved in initial consultations with new clients – even if it means taking the lead, reaching out to the attorney holding the consultation, and requesting you be added to the meeting. This direct, more personal contact serves as a reminder that beyond the pleadings and memos, there is still a client that needs our help and that we are responsible for aiding and understanding. This exposure to the client and chance to observe and understand a case from an initial evaluation is invaluable and goes a long way in training.



How to Bridge the Training Gap

... SOON THE NEXT GENERATION OF LAWYERS MIGHT HAVE TO BEGIN THEIR CAREERS "OUT OF OFFICE"

There will never be a perfect substitute for beginning your career in an office – however, below are a few tips in which you can help bridge the gap for your own training during the early stages of your profession as you adjust to working remotely.

The new realities of working during the COVID-19 pandemic have now become more of a routine than an adjustment. Socially-distanced work spaces, mandatory masks, and offices at an enforced 25% capacity have become the new normal.

Be Diligent – and Avoid Complacency

When removed from the office and confined to home, it might be hard to keep your enthusiasm about your new career and lose sight of the bigger picture. It can be disappointing to have worked through years of school and studying, only to then be stuck at home feeling like you are back to learning on your own and missing out on the real feeling of being a professional. A self-implemented structure and routine can help you keep focus and stay diligent on your path of development and training. For example, setting aside certain hours of the day for familiarizing yourself with case law and rules of procedure can break up ruts, keep you fresh, and educate you in ways that working on individual assignments might not. Or since communication is especially important when working remotely, hold yourself accountable by providing updates to your team whenever a task is underway or completed. This decreases the likelihood of miscommunications and improves your own ability to stay on top of tasks and efficiently communicate. The specifics will vary depending on the person, but the important thing is being able to simulate the mindset and attitude you would have if you were in

Utilize VIDEO CONFERENCING

Video communications can be utilized as an effective tool for training. Learning comes not only from simply reading instructions, but also by conferencing in when communicating with your superiors.



Involvement INITIAL CONSULTATIONS

Initial consultations remind us of the unique circumstances and situations every client brings to the table. We should be exposed to this whenever possible. So, be proactive about getting involved in initial consultations with new clients – even if it means reaching out, and requesting to be added to the consultation meeting.



Be Diligent AVOID COMPLACENCY

When removed from the office and confined to home, it might be hard to keep your enthusiasm about your new career and lose sight of the bigger picture. A self-implemented structure and routine can help you stay on top of tasks and keep you focused on your path of development and training.



Resources USE ALL AVAILABLE

Every person in the office has a different expertise to offer and serves an integral role on the team, and so much can be learned by utilizing everyone's experience as a resource.



the office. For those struggling to adapt to working from home, adopting a routine to recreate that approach is crucial to avoid any complacency that may result from being removed from the typical and more stimulating workplace environment of an office.

Use ALL of the Resources Available to You

Regardless of the COVID-19 pandemic, a new attorney, on any given day, might have dozens of different questions while learning about how their office functions and how tasks are expected to be handled. These areas of confusion are not always about substantive legal issues but can be related to clerical or procedural processes that are new to you, but everyday habit for everyone else. For example, it took me months to learn how to properly organize and append emails – a very simple expectation to handle, but still something I was entirely unaware of until someone explained it to me. You should always utilize and take advantage of all the educational

resources you have at your disposal – and what many young attorneys don't immediately realize is that every single person in their office has a depth of knowledge that can aid in one's training. Legal assistants and paralegals are the glue that holds a legal team together and can be life-saving guides as you navigate issues involving office communications, court procedures, and scheduling. After a year on the job, I cannot count the number of times I have leaned on staff members for serious questions about how to arrange for service of process, review affidavits of financial information and tax returns, or e-file something with the court. Every person in the office has a different expertise to offer and serves an integral role on the team, and so much can be learned by utilizing everyone's experience as a resource. Just as it takes a village to raise a child, **it takes an entire office to help a law student become a lawyer** – and everyone on your team can be there to help you develop into the great attorney you strive to become. 



TIMOTHY RADOVICH is an associate attorney with the family law firm of *Fromm Smith & Gadow, P.C.*, handling family law matters. A career in family law has been Timothy's passion and goal since beginning law school at Arizona State University in 2016. You can contact Timothy at tradovich@fsg-law.com.

S

S

between Family Court and Probate Court: Part 2

over

i

by **Kathleen Stillman**

WHEN TWO PARTIES ARE SEEKING TO DISSOLVE THEIR MARRIAGE, AND **ONE OF THE PARTIES INVOLVED IN THE DIVORCE HAS DIMINISHED CAPACITY**, IT IS THEN QUESTIONABLE AS TO THE PARTY'S ABILITY TO MAKE DECISIONS RELATED TO HIS/HER DIVORCE.



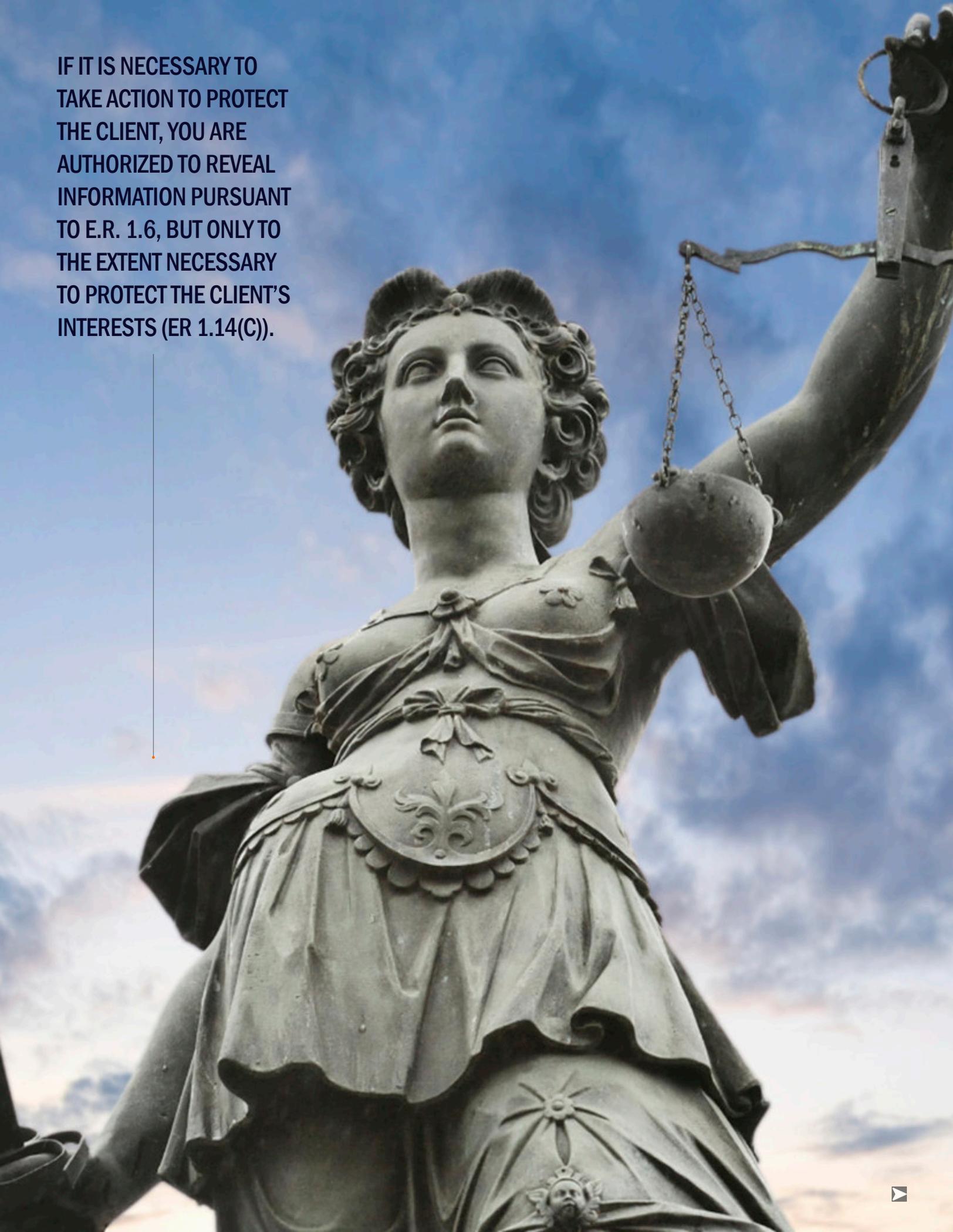
ALTHOUGH THE PROBATE AND FAMILY COURT GENERALLY RUN IN SEPARATE CIRCLES, there are two key situations when there is significant crossover between the two. The first situation is when parents get divorced and they have a minor child who will need a guardian/conservator once the child turns eighteen. The second situation is when one of the parties involved in a divorce has diminished capacity and it is questionable as to the party's ability to make decisions related to his/her divorce. The first situation, involving potential guardianship of a minor child, was addressed in the Fall 2019 Family Law News. This article will focus on the second situation, when the mental capacity of one of the parties is in question.

If you have not encountered these circumstances yet, there is a high probability that you will at some point in your legal career. A potential client comes to your office (often with a family member accompanying them) and you find through your consultation process that he/she simply does not have the ability to understand what is happening. Perhaps they have been encouraged by family members to seek legal advice or the other spouse has already initiated the dissolution process. Regardless of the circumstances, you realize that if you move forward with assisting the client, they will

need someone else to help them make the decisions that are necessary to complete the process. When you find yourself in this situation, the Arizona Rules of Professional Conduct provide a starting point for guidance. ER 1.14 specifically addresses clients with diminished capacity and our ethical obligations to the client. When working with a client with diminished capacity, the lawyer shall maintain a normal client-lawyer relationship as much as reasonably possible (ER 1.14(a)). With that being said, when the lawyer reasonably believes that the client



**IF IT IS NECESSARY TO
TAKE ACTION TO PROTECT
THE CLIENT, YOU ARE
AUTHORIZED TO REVEAL
INFORMATION PURSUANT
TO E.R. 1.6, BUT ONLY TO
THE EXTENT NECESSARY
TO PROTECT THE CLIENT'S
INTERESTS (ER 1.14(C)).**



has diminished capacity such that they are at risk of substantial physical, financial or other harm unless action is taken and they do not have the ability to adequately act in their own interest, the lawyer must take reasonably necessary action to protect the client. This includes consulting with individuals or entities that have the ability to take action to protect the client, including appointment of a guardian ad litem, conservator or guardian (ER 1.14(b)). If it is necessary to take action to protect the client, you are authorized to reveal information pursuant to E.R. 1.6, but only to the extent necessary to protect the client's interests (ER 1.14(c)). The inherent problem is that practitioners must simply use their best judgment of when to involve a third party and who the best person/entity is to help protect the interests of the client.

The Comments to ER 1.14 do provide some additional guidance that are worth reviewing. Regardless of the client's mental capacity, treat the client with respect, maintain communication with the client and involve third parties that can assist in assessing the client's ability to make decisions and be involved in the decision-making process. Any protective action taken should be to the least extent necessary to protect the client's interests. The lawyer may need to take measures such as: consulting with family members, consulting with support groups, professional services, or adult protective agencies and should be guided by factors such as the client's wishes and values (if known), maximizing client capacities and respecting the client's family and social connections (ER 1.14 Comment [5]).

and values (if known), maximizing client capacities and respecting the client's family and social connections (ER 1.14 Comment [5]).

You've made the difficult decision that your client's diminished capacity requires a third party to be involved in making decisions, now what? First, determine if your client has already designated someone other than the spouse as their power of attorney. If a power of attorney is already in place, it may eliminate the need for involvement of the probate court and it may simplify the process. However, if the mental capacity of the client is in question, executing a power of attorney at that time is not an option. If there are no current power of attorney documents in place, having a guardian or conservator appointed through the probate court is often necessary.

Some advantages of someone seeking a guardianship/conservatorship on behalf of the client are that you have someone who can act on behalf of the client and the client is appointed an attorney (through probate court) that will be able to provide guidance and advocate on behalf of the client as well. Thus, the client not only has a guardian and/or conservator that must adhere to defined duties pursuant to A.R.S. Title 14, but the client also has a

"REGARDLESS OF THE CLIENT'S MENTAL CAPACITY, TREAT THE CLIENT WITH RESPECT, MAINTAIN COMMUNICATION WITH THE CLIENT AND INVOLVE THIRD PARTIES THAT CAN ASSIST IN ASSESSING THE CLIENT'S ABILITY TO MAKE DECISIONS AND BE INVOLVED IN THE DECISION-MAKING PROCESS."



The lawyer... should be guided by factors such as the client's wishes and values (if known), maximizing client capacities and respecting the client's family and social connections (ER 1.14 Comment [5]).





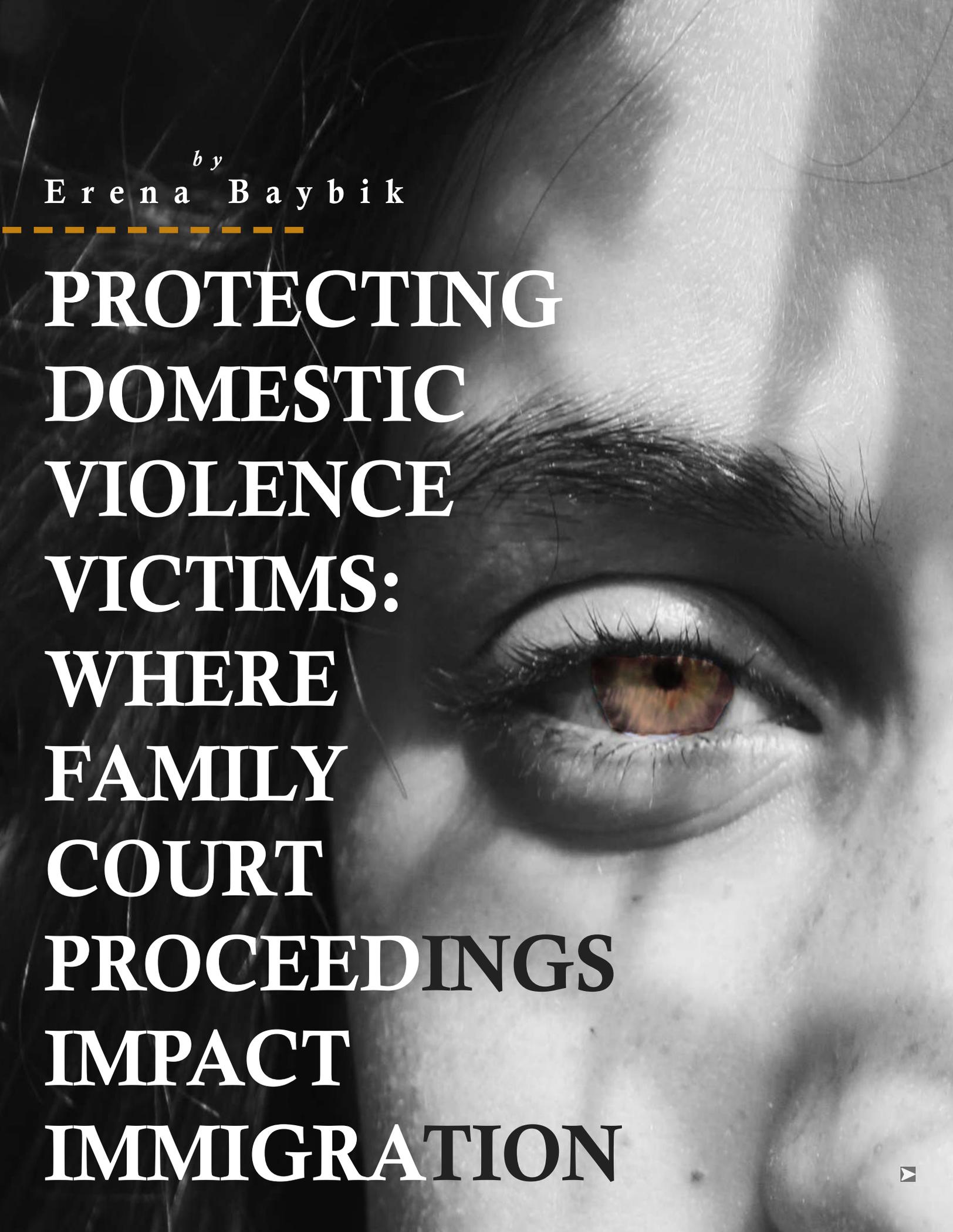
The guardian's powers and duties relate more to the care and well-being of the client whereas the conservator is needed to oversee and control the client's estate.

court appointed attorney to oversee what is in the client's best interest. The powers and duties of a guardian can be found at A.R.S. §14-5312. The powers and duties of a conservator can be found at A.R.S. §14-5417, §14-10804 and §14-10806. The guardian's powers and duties relate more to the care and well-being of the client whereas the conservator is needed to oversee and control the client's estate. Often, the guardian and conservator are one in the same. In a dissolution proceeding, it is likely that a conservator will need to be appointed to handle and administer the client's assets.

The disadvantages of having a court appointed guardian/conservator are that (1) initiating the process is costly for the guardian/conservator (just shy of \$700 in fees for filing and for the court investigator) and (2) decisions related to the dissolution must be given the stamp of approval first from the court appointed attorney and Commissioner serving in the guardianship/conservatorship matter in probate court. The appointment of a guardian/conservator is a good safety measure; however, be sure to build in time for reaching agreements and finalizing paperwork. Once agreements have been reached, the guardian/conservator must seek approval through the probate court before lodging the document in the family court.

Clear as mud, right? When representing a client that appears to have diminished capacity, review your ethical rules and seek out the assistance of those who work in and with the probate court to provide your client with the best representation, support and protection possible throughout their dissolution. [FL](#)

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 with disabilities. You can contact Kathleen at kstillman@fsg-law.com.

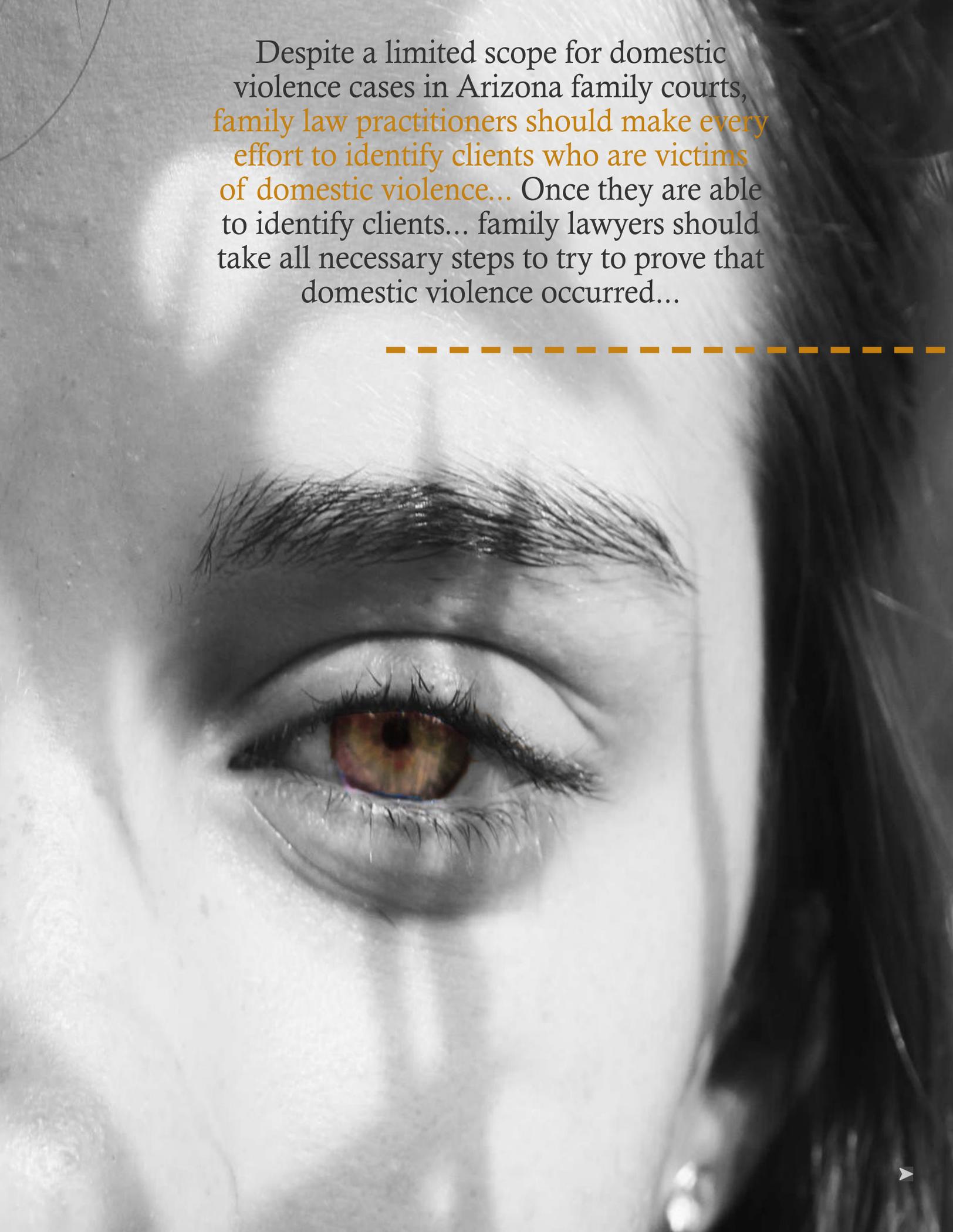


by
E r e n a B a y b i k

**PROTECTING
DOMESTIC
VIOLENCE
VICTIMS:
WHERE
FAMILY
COURT
PROCEEDINGS
IMPACT
IMMIGRATION**



Despite a limited scope for domestic violence cases in Arizona family courts, family law practitioners should make every effort to identify clients who are victims of domestic violence... Once they are able to identify clients... family lawyers should take all necessary steps to try to prove that domestic violence occurred...





<

When litigating family court cases that involve domestic violence and foreign nationals, it is important to understand how the family court proceedings can impact clients who have unresolved immigration issues.

WITH THE RAMPANT SPREAD OF COVID-19 IN THE UNITED STATES, THERE HAS BEEN AN UNPRECEDENTED INCREASE IN DOMESTIC VIOLENCE CASES,

both in the Arizona family courts and at the U.S. Citizenship and Immigration Services offices. When litigating family court cases that involve domestic violence and foreign nationals, it is important to understand how the family court proceedings can impact clients who have unresolved immigration issues.

The Violence Against Women Act of 1994 (VAWA) is the main statute that governs battered and abused spouses under the current U.S. immigration laws. **(1) It provides protection and eligibility to legalize one's status through a self-petition, filed**

VAWA created the first U.S. federal legislation acknowledging domestic violence and sexual assault as crimes, and provided federal resources to encourage community-coordinated responses to combating violence.

independently of the abusive U.S. citizen or U.S. lawful permanent resident spouse, provided the applicant or petitioner was at one time married to the U.S. citizen or U.S. lawful permanent resident, and was battered or subject to extreme cruelty. The spouse must demonstrate that he or she resided with the abusive U.S. citizen or U.S. lawful permanent resident spouse, was battered or subject to extreme cruelty during the marriage, the marriage was entered into in good faith, and that she or he is otherwise eligible for immigrant relative or preference status, and has good moral character. **(2) Furthermore, acts that may not appear violent may be considered violent if part of an overall pattern of violence. (3)**

^

The Violence Against Women Act of 1994 (VAWA) is the main statute that governs battered and abused spouses under the current U.S. immigration laws.



VAWA cases are adjudicated at the U.S. Citizenship and Immigration Services office in Vermont, and since *Section 384 of IIRIRA, 8 USC §1367(a)(2)* **made it illegal to release any information concerning a battered spouse to the alleged abuser with a few limited exceptions**, these cases are adjudicated on an ex parte basis where the abusive spouse would not even know what was submitted by the abused spouse.

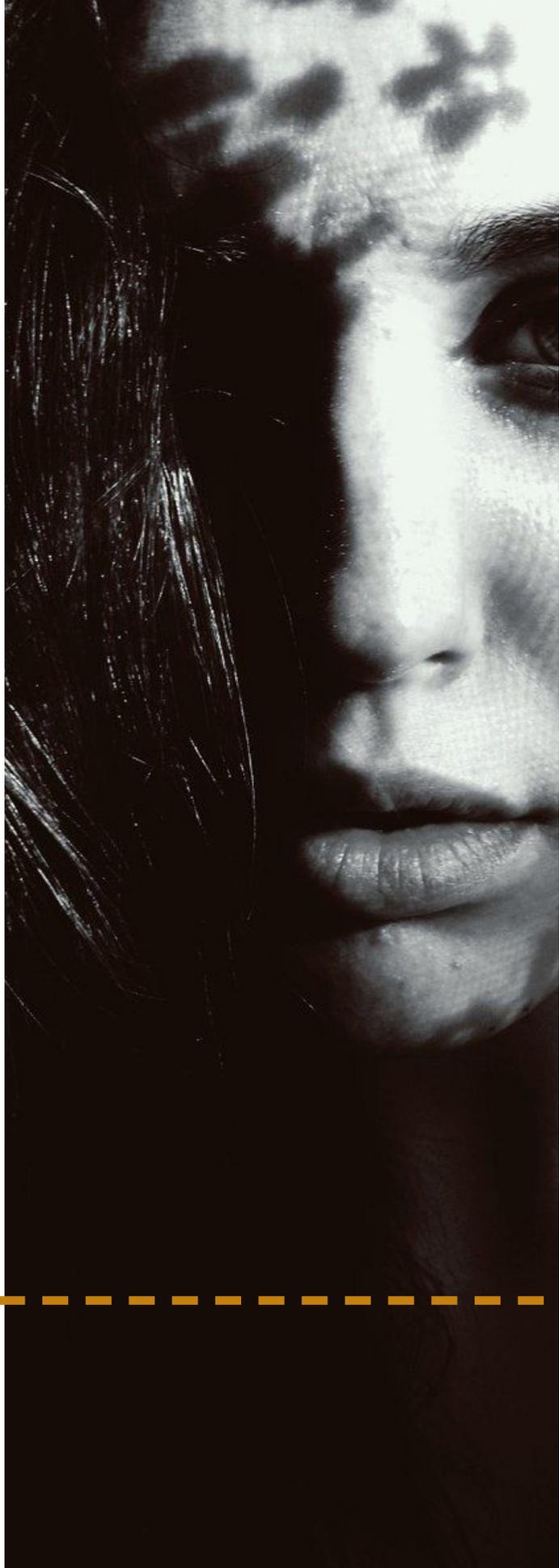
Furthermore, even if the abusive spouse submits evidence into the record by calling the ICE Hotline or by directly mailing their evidence to the Vermont Service Center, **(4), that evidence cannot be used solely to determine the applicant's qualification without considering the evidence submitted by the applicant and his or her testimony. (5)** Also, worth noting, is that **consulting a lawyer specializing in family law is one of the listed categories of evidence that can be used in support of a VAWA petition. (6)**

Some of the advantages to filing this type of petition is that the applicant does not have to show legal entry into the country, nor be in lawful status in the United States at the time of filing. This category even allows a waiver to be filed to waive certain bars to admission that would otherwise not be waivable if the applicant were trying to legalize through another category. **Furthermore, these applicants are also exempt from the public charge law, and are not required to have someone financially sponsor their petition by filing what is called an affidavit of support form. (7)** For all of these reasons, anyone who has suffered from domestic violence and otherwise qualifies for this category, should take all necessary steps to qualify for it.

Under Arizona family law statutes, **domestic violence is defined more narrowly and is generally only applied in parenting-related cases, and in rare spousal maintenance matters** where the abuse is so severe that it prevents the abused spouse from continuing or finding gainful employment.



...the advantages to filing this type of petition is that the applicant does not have to show legal entry into the country, nor be in lawful status in the United States at the time of filing.





...family lawyers should take all necessary steps to try to prove that domestic violence occurred in the family court proceedings as this would greatly benefit their clients who find themselves in these situations.



Despite this limited scope for domestic violence cases in Arizona family courts, family law practitioners should still make every effort to identify clients who are victims of domestic violence, are married to U.S citizens or lawful permanent residents, and who are currently in immigration proceedings or in the United States illegally. Once they are able to identify clients that meet these requirements, family lawyers should take all necessary steps to try to prove that domestic violence occurred in the family court proceedings as this would greatly benefit their clients who find themselves in these situations. [FL](#)

ERENA BAYBIK has been practicing immigration law for 16 years and has been more recently practicing in the area of family law. She is licensed in Arizona and New York. Erena graduated from New York Law School in 2001 and earned a Master's Degree in Comparative Law from Moscow State University in 2004.



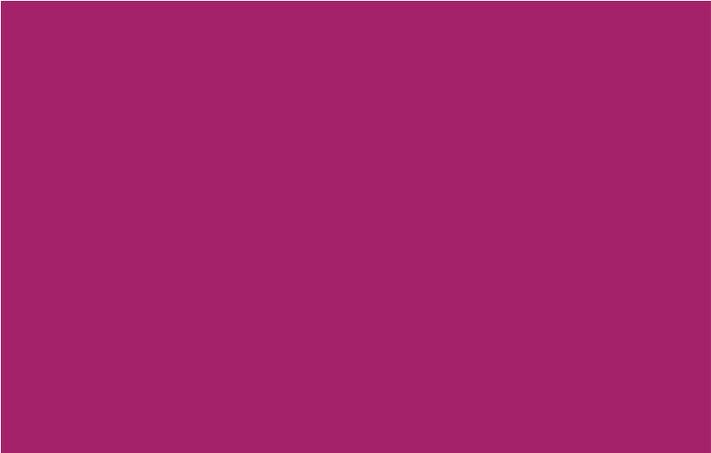
- (1) **Violence Against Women Act of 1994**, PL 103-322, 108 Stat. 1902-55, 8 USC §§1151, 1154, 1186a note, 1254, 2245 (1994); Victims of Trafficking and Violence Protection Act (VTVPA), Tit. V (Battered Immigrant Women Protection Act) PL 106-386, 114 Stat. 1464 (Oct. 28, 2000); 2000 H.R. 3244; Violence Against Women Reauthorization Act of 2005, PL 109-162, 119 Stat. 2960 (Jan. 5, 2006), Cong. Rec. S13753 et seq. (Dec. 16, 2005) (Summary); Violence Against Women and DOJ Reauthorization Act - Technical Corrections, PL 109-271, 120 Stat. 750 (2006); 75 FR 66246-65 (Oct. 27, 2010) [extending VAWA protection to HUD Programs]
- (2) INA §§204(a)(1)(A)(iii)-(vii) & (B)(ii)-(iii); 8 USC §§1154(a)(1)(A)(iii)-(vii) & (B)(ii)-(iii); 8 CFR §204.2(c),(e)
- (3) 8 CFR §204.2(e)(1)(vi). See matter of ____, EAC 05 135 53024 (VSC July 2, 2008), AILA Doc. No. 08092261 [denying petition by male alleging abuse]
- (4) All I-360 VAWA petitions are filed with the VSC. Memo, Acting Exec. Assoc. Comm., INS (May 6, 1997), reprinted in 74 No. 23 *Interpreter Releases* 962, 971-77 (June 16, 1997). USCIS will also send notices that the petitioner has established a prima facie case so that s/he may qualify for means-tested benefits. 8 CFR §204.2(c)(6)
- (5) Memo, Virtue, Acting Exec. Assoc. Comm. (May 5, 1997), reprinted in 74 No. 18 *Interpreter Releases* 783, 795-97 (May 12, 1997)
- (6) 8 CFR §204.2(c)(2)(iv) and (e)(2)(iv)
- (7) INA §212(a)(4)(E)



“Just as ripples spread out when a single pebble is dropped into water, the actions of individuals can have far-reaching effects.” - *Dalai Lama*

Volunteer - How to get Connected

“The meaning of life is to find your gift. The purpose of life is to give it away.” - *William Shakespeare*



As attorneys we have been blessed with a gift - our legal expertise and training. We can all agree that 2020 has been filled with unprecedented events. The call to action, whether as direct service or donations, has never been more poignant.

Arizona ER 6.1 provides that “A Lawyer should voluntarily render public interest legal service” and recommends a minimum of 50 hours of service per year. ER 6.1 also states that “...a lawyer is encouraged to provide financial support for organizations that provide legal services to persons of limited means.”

The following list is neither all inclusive, nor is it a State Bar endorsement or recommendation of any particular program. It is a tool provided with the hope that each of you will make time to connect with your local agencies or state-wide opportunities and share your gifts. If the organization you most prefer is not listed, reach out to a colleague, tell them about your experience, and how to get involved.



Online Pro Bono Project

What is this?

Offered through the Arizona Bar Foundation, volunteers provide answers to legal questions posted by a user on either:

- lawforveterans.org
- lawersforseniors.org
- lawforkids.org
- azlawhelp.org

How do I get involved?

Go to the website and complete the volunteer form: <https://www.azflse.org/azflse/volunteeropps/volunteer.cfm>

Modest Means Project

What is this?

Facilitated by the Arizona Bar Foundation and the State Bar of Arizona, volunteer attorneys provide a one-hour meeting for a fee of \$75. Full representation is not expected but may be offered at the \$75 per hour rate.

How do I get involved?

Go to the website and complete the volunteer form: <https://www.azflse.org/azflse/volunteeropps/AccessToJusticeVolunteerformcfm>



Statewide Programs

Find a Lawyer Program - What is this?

Administered by the Arizona State Bar, this program enables people looking for an attorney to create a post detailing their legal needs or search lawyer created profiles to locate a specific attorney. Although, this program is not meant to be a pro bono website, many members of the public will post on this platform looking for free or discounted legal assistance.

How do I get involved?

Go to the state bar website and complete your profile: <https://azbar.legalserviceslink.com>



Apache County

DNA People's Legal Services - VLP

What is this?

DNA is a nonprofit law firm that provides legal assistance, advice and representation in U.S. and tribal courts. It offers a wide variety of volunteer opportunities to include mentorship, direct representation, self-help clinics, and public education seminars.

How do I get involved?

Contact Armida Lara, PAI Coordinator at: alara@dnalegalservices.org or call 928-774-0653 ext. 4801

Donations are also accepted on their website at: <https://dnalegalservices.org/>

Southern Arizona Legal Aid - VLP

What is this?

SALA is a nonprofit public interest law firm whose mission is to provide quality legal services to people would not otherwise have equal access to justice. The organization spans many counties and offers various ways to volunteer to include various Family Law clinics and projects, Minor Guardianship projects, Bankruptcy clinics, and a Wills clinic.

How do I get involved?

Go to the website and complete the volunteer form: <https://www.sazlegalaid.org/volunteer/#lawyer>; Donations are also accepted on their website at: <https://www.sazlegalaid.org>

By County

The programs that assist low income individuals vary by county. Here and on the next couple of pages are a brief description of each program and how to volunteer.



Southern Arizona Legal Aid - VLP

What is this?

SALA is a nonprofit public interest law firm whose mission is to provide quality legal services to people would not otherwise have equal access to justice. The organization spans many counties and offers various ways to volunteer to include various Family Law clinics and projects, Minor Guardianship projects, Bankruptcy clinics, and a Wills clinic.

How do I get involved?

Go to the website and complete the volunteer form: <https://www.sazlegalaid.org/volunteer/#lawyer>

Donations are also accepted on their website at: <https://www.sazlegalaid.org>

Cochise County

Gila County

Southern Arizona Legal Aid - VLP

What is this?

SALA is a nonprofit public interest law firm whose mission is to provide quality legal services to people would not otherwise have equal access to justice. The organization spans many counties and offers various ways to volunteer to include various Family Law clinics and projects, Minor Guardianship projects, Bankruptcy clinics, and a Wills clinic.

How do I get involved?

Go to the website and complete the volunteer form: <https://www.sazlegalaid.org/volunteer/#lawyer>

Donations are also accepted on their website at: <https://www.sazlegalaid.org>



Graham County

Southern Arizona Legal Aid - VLP

What is this?

SALA is a nonprofit public interest law firm whose mission is to provide quality legal services to people would not otherwise have equal access to justice. The organization spans many counties and offers various ways to volunteer to include various Family Law clinics and projects, Minor Guardianship projects, Bankruptcy clinics, and a Wills clinic.

How do I get involved?

Go to the website and complete the volunteer form: <https://www.sazlegalaid.org/volunteer/#lawyer>

Donations are also accepted on their website at: <https://www.sazlegalaid.org>

Coconino County

DNA People's Legal Services - VLP

What is this?

DNA is a nonprofit law firm that provides legal assistance, advice and representation in U.S. and tribal courts. It offers a wide variety of volunteer opportunities to include mentorship, direct representation, self-help clinics, and public education seminars.

How do I get involved?

Contact Armida Lara, PAI Coordinator at: alara@dnalegalservices.org or call 928-774-0653 ext. 4801

Donations are also accepted on their website at: <https://dnalegalservices.org/>



Maricopa County

Community Legal Services - Family Lawyer Assistance Project (FLAP)

What is this?

This is a special program offered only in Maricopa County to assist Maricopa residents with family law issues. The clinic is located at 201 W. Jefferson, 6th Floor. There is a \$40.00 charge for those who exceed the financial need threshold.

How do I get involved?

Go to the website and complete the enrollment form: <https://clsaz.org/volunteer-attorney-enrollment/>

Community Legal Services - VLP

What is this?

CLS is a non-profit law firm committed to promoting equal access to justice for all by striving to assure fairness no matter how much money you have. It provides direct services to individuals falling below 125% of the federal poverty level. Volunteers provide pro bono representation, brief advocacy, legal advice or education to clients.

How do I get involved?

Go to the website and complete the volunteer enrollment form: <https://clsaz.org/volunteer-lawyers-program/>; Donations are also accepted on their website at: <https://clsaz.org/donate/>

Community Legal Services - Children's Law Center

What is this?

CLS and the Maricopa County Bar Association co-sponsor this special clinic in order to better address the unmet legal needs of children. The project fills the gaps in legal assistance by focusing their efforts on assisting children with diverse ethnic, racial, and economic backgrounds.

How do I get involved?

Contact Roni Tropper, Esq., Coordinator, Children's Law Center 602-258-3434 ext 2660 or email at Rtopper@clsaz.org

Greenlee County

La Paz County

Community Legal Services - VLP

What is this?

CLS is a non-profit law firm committed to promoting equal access to justice for all by striving to assure fairness no matter how much money you have. It provides direct services to individuals falling below 125% of the federal poverty level. Volunteers provide pro bono representation, brief advocacy, legal advice or education to clients.

How do I get involved?

Go to their website and complete the enrollment form: <https://clsaz.org/volunteer-lawyers-program/>; Donations are also accepted on their website at <https://clsaz.org/donate/>

Southern Arizona Legal Aid - VLP

What is this?

SALA is a nonprofit public interest law firm whose mission is to provide quality legal services to people would not otherwise have equal access to justice. The organization spans many counties and offers various ways to volunteer to include various Family Law clinics and projects, Minor Guardianship projects, Bankruptcy clinics, and a Wills clinic.

How do I get involved?

Go to the website and complete the volunteer form: <https://www.sazlegalaid.org/volunteer/#lawyer>; Donations are also accepted on their website at: <https://www.sazlegalaid.org>



Southern Arizona Legal Aid - VLP

What is this?

SALA is a nonprofit public interest law firm whose mission is to provide quality legal services to people who would not otherwise have equal access to justice. The organization spans many counties and offers various ways to volunteer to include various Family Law clinics and projects, Minor Guardianship projects, Bankruptcy clinics, and a Wills clinic.

How do I get involved?

Go to the website and complete the volunteer form: <https://www.sazlegalaid.org/volunteer/#lawyer>; Donations are also accepted on their website at: <https://www.sazlegalaid.org>

Step up to Justice

What is this?

Step Up to Justice is a non-profit pro bono law center that provides free civil legal assistance to low income residents of Pima County through its volunteer attorney network. The organization offers a variety of clinics and projects to include Family Law, Minor Guardianship, Landlord/Tenant assistance, and Will/Probate advice.

How do I get involved?

Go to the website and complete the volunteer form: <http://www.stepuptojustice.org/volunteer>
Donations are also accepted on their website at: <http://www.stepuptojustice.org/donate>

Pima County

Pima County Bar Association - QUILT Program

What is this?

QUILT stands for Qualified Income Legal Team. It is a modest means program designed to help those that make too much money to qualify for free legal services, but not enough to afford an attorney at the standard rates. Volunteers agree to take cases at a reduced \$100.00 per hour rate.

How do I get involved?

Contact the Pima County Bar Association at: 520-623-8258 or visit their website at: www.pimacountybar.org

Community Legal Services - VLP

What is this?

CLS is a non-profit law firm committed to promoting equal access to justice for all by striving to assure fairness no matter how much money you have. It provides direct services to individuals falling below 125% of the federal poverty level. Volunteers provide pro bono representation, brief advocacy, legal advice or education to clients.

How do I get involved?

Go to their website and complete the enrollment form: <https://clsaz.org/volunteer-lawyers-program/>; Donations are also accepted on their website at <https://clsaz.org/donate/>

Mohave County

Navajo County

Southern Arizona Legal Aid - VLP

What is this?

SALA is a nonprofit public interest law firm whose mission is to provide quality legal services to people who would not otherwise have equal access to justice. The organization spans many counties and offers various ways to volunteer to include various Family Law clinics and projects, Minor Guardianship projects, Bankruptcy clinics, and a Wills clinic.

How do I get involved?

Go to the website and complete the volunteer form: <https://www.sazlegalaid.org/volunteer/#lawyer>; Donations are also accepted on their website at: <https://www.sazlegalaid.org>

VOLUNTEER
OLUNTEER
ROWTH
SERVE
Help
SERV
COMMUNITY Co
Conne

Pinal County

Southern Arizona Legal Aid - VLP

What is this?

SALA is a nonprofit public interest law firm whose mission is to provide quality legal services to people who would not otherwise have equal access to justice. The organization spans many counties and offers various ways to volunteer to include various Family Law clinics and projects, Minor Guardianship projects, Bankruptcy clinics, and a Wills clinic.

How do I get involved?

Go to the website and complete the volunteer form: <https://www.sazlegalaid.org/volunteer/#lawyer>; Donations are also accepted on their website at: <https://www.sazlegalaid.org>

Community Legal Services - VLP

What is this?

CLS is a non-profit law firm committed to promoting equal access to justice for all by striving to assure fairness no matter how much money you have. It provides direct services to individuals falling below 125% of the federal poverty level. Volunteers provide pro bono representation, brief advocacy, legal advice or education to clients.

How do I get involved?

Go to the website and complete the volunteer enrollment form: <https://clsaz.org/volunteer-lawyers-program/>; Donations are also accepted on their website at: <https://clsaz.org/donate/>

Yuma County

Community Legal Services - VLP

What is this?

CLS is a non-profit law firm committed to promoting equal access to justice for all by striving to assure fairness no matter how much money you have. It provides direct services to individuals falling below 125% of the federal poverty level. Volunteers provide pro bono representation, brief advocacy, legal advice or education to clients.

How do I get involved?

Go to their website and complete the enrollment form: <https://clsaz.org/volunteer-lawyers-program/>; Donations are also accepted on their website at <https://clsaz.org/donate/> 

Santa Cruz County

Yavapai County

Southern Arizona Legal Aid - VLP

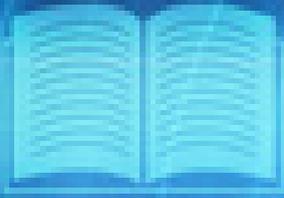
What is this?

SALA is a nonprofit public interest law firm whose mission is to provide quality legal services to people who would not otherwise have equal access to justice. The organization spans many counties and offers various ways to volunteer to include various Family Law clinics and projects, Minor Guardianship projects, Bankruptcy clinics, and a Wills clinic.

How do I get involved?

Go to the website and complete the volunteer form: <https://www.sazlegalaid.org/volunteer/#lawyer>; Donations are also accepted on their website at: <https://www.sazlegalaid.org>





FAMILY LAW HEARINGS WITH MICROSOFT TEAMS

BY HON. GREG SAKALL, PRESIDING FAMILY LAW JUDGE, PIMA COUNTY SUPERIOR COURT



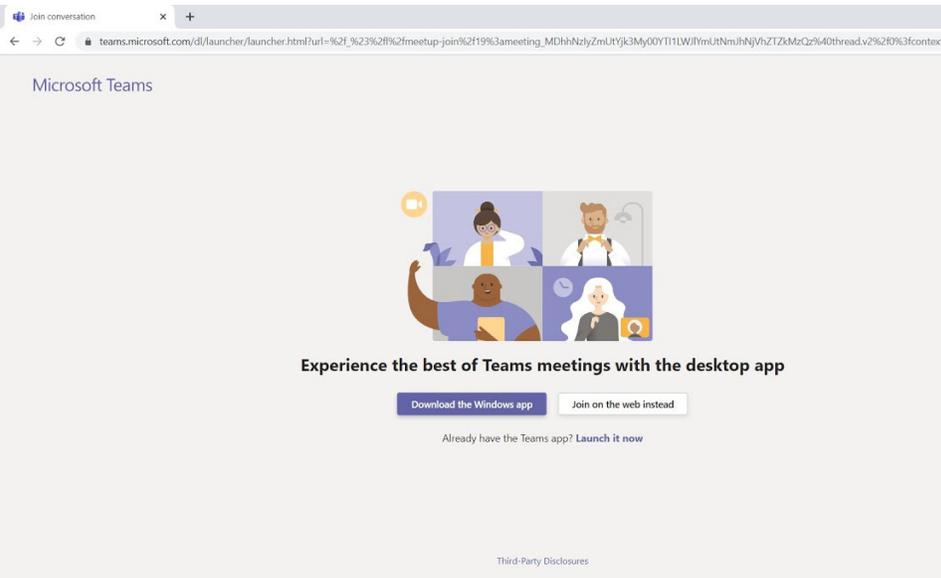
The bench greatly appreciates the ongoing efforts of the family law bar to adapt to conducting hearings via Microsoft Teams. The bench and bar have pivoted relatively quickly to maintain access to justice while ensuring that parties, their families, as

well as Court and Clerk staff can remain healthy during the pandemic. That said, most of us have not approached Malcolm Gladwell’s 10,000-hour rule such that we could consider ourselves experts in using meetings in Microsoft Teams to conduct family law hearings and trials. We’re all learning, and hopefully improving. We’re all also investing in our technology. For Pima County Superior Court, that includes a major investment in the audio systems for the large majority of our courtrooms.

In the spirit of ongoing learning and cooperation, following are some tips in how to make the most of your hearing via Microsoft Teams meetings:



Download the Microsoft Team application – We have found better functionality especially with video for those who have downloaded the app.



PRACTICE, PRACTICE, PRACTICE – DO A TEST RUN FOR THE HEARING

- **Download the Microsoft Team application**
We have found better functionality especially with video for those who have downloaded the app.

- **Practice, practice, practice** – Do a test run for the hearing using the devices that you plan to use at the hearing. If your client is not going to be with you, then be sure to include your client. If you want to reach out to chambers to test technology, feel free to check with the Division to see if they can set up a time to check the connection.

- **Client & Attorney Separate** – If you and your client are going to be in separate rooms or locations, plan on how you will communicate with your client. Whether you plan to text, call, or something else, the lesson is the same - practice what you’re going to do.

- **Client & Attorney Together** – If you and your client are going to be in the same room, plan on how you are going to handle the audio and video. Will you have one video or multiple videos? How are you going to handle audio? Two audio connections in the same room don’t work well.

- **Remember it’s still a court proceeding** – Remind your clients and witnesses that this isn’t a Zoom happy hour. Dress like you’re going to court. Don’t do what you wouldn’t do in court (e.g., eat, be in bed, etc.)

- **Interpreters** – Be sure to let the Court know, in a timely manner, if you client will need an interpreter. For Pima County Superior Court, our interpreters will likely need to have a phone number where they can call your client directly. Please have the phone number available.

- **For audio, use the call-in number** – We truly want to hear you and your clients. It’s frustrating for everyone

when we have to ask someone to repeat the question or answer. We have found that overall, the audio quality is dramatically improved if you use a headphone with microphone or a phone to call in. If you use a phone, be sure to turn off the speakers



Remind your clients and witnesses that this isn't a Zoom happy hour. Dress like you're going to court.





▲ **For video, consider multiple cameras.** We want to see you and your clients. Consider investing in an extra laptop that your client can use. Or have them use a smartphone.



▲ **For audio, use the call-in number.** We want to hear you and your clients. We have found that overall, the audio quality is dramatically improved if you use a headset with microphone.



▲ **When it comes to Microsoft Teams, get help.** If you don't have someone who can help you figure out the technology, pay a professional to get your system up to speed.

How to Make the Most of Your Hearing

Practice patience and kindness – Whether it's your client, opposing counsel, or the judges, realize we are all learning.

and microphone on your computer. Consider investing in a quality speakerphone with microphone that can connect to your laptop.

- **Consider muting your audio when not speaking** – Muting your audio when not speaking reduces extra background noise and distractions.
- **For video, consider multiple cameras** – We truly want to see you and your clients. Consider investing in an extra laptop that your client can use. If that's not available, then your client can still use a smartphone to access Teams. Consider purchasing an articulating arm that can hold the smartphone.
- **Backgrounds** – If you don't want us to see what's behind you, you can and probably should blur your background.
- **Consider sharing your screen** – When appropriate, consider using the share screen function. You can share documents, videos, etc.
- **If you are a luddite when it comes to Microsoft Teams, get help** – If you don't have a 5th grader at home who can help you figure out the technology, pay a professional to get your system up to speed. Recall your duty of competence requires you to adapt to new technologies.



Lastly, following are some general points that should be recalled:

- **Narrow the issues, if possible** – The duty to meet-and-confer is even more important with these hearings. We all know it takes 5-10 minutes - on a good day - for everyone to get online. For hearings, trials, and settlement conferences, “new” issues cause unnecessary delay. Discuss your exhibits and witnesses, and any objections.
- **Exhibits** – Make sure everyone - including the Clerk and your witnesses - has your exhibits.
- **Keep learning** – Many organizations are offering CLEs regarding hearings via videoconferencing. Consider attending them. Keep reading and learning as Microsoft continues to update its product. More tips are available here: https://www.sc.pima.gov/Portals/0/Library/best_practices.pdf.
- **Practice patience and kindness** – Whether it's your client, opposing counsel, or the judges, realize we are all learning. We also understand that we're all juggling many things - kids and pets will sometimes make unexpected appearances despite best laid plans. Hopefully we'll be able to return to in-person family law hearings before we reach Gladwell's 10,000-hour rule for expertise. **Stay well.** FL

HONORABLE GREG SAKALL was appointed to the Pima County Superior Court in 2017. He is currently the Presiding Judge of the Family Law Bench. After law school, Judge Sakall clerked for U.S. District Judges William D. Browning and Cindy K. Jorgenson. From 2004 to 2017, he was in private practice. He has also been an adjunct associate professor and is a guest lecturer at the James E. Rogers College of Law.

Education: Hillsdale College (B.A., summa cum laude, 1995, double major in Spanish & History); University of Arizona James E. Rogers College of Law (J.D., summa cum laude, May 2001).

If You Have a Divorce Case That Includes a Request for Spousal Maintenance

and may soon be eligible for the default process, make sure you complete the required Default Information for Spousal Maintenance Form (See Form 6, ARFLP Rule 97). According to ARFLP Rule 44.1 Default Decree or Judgment by Motion and Without a Hearing, a default judgment may be entered without a hearing as long as the circumstances outlined in the rule have been met and a Motion and Affidavit are filed attesting to party's eligibility. However, in cases where spousal maintenance is at issue, you must take an additional step when you file the Application for Default (Rule 44). Best practice would be to incorporate this new form into your existing Application for Default.

Courtesy of **Kristy Clairmont**, Family Law Legal Consulting, PLLC

Include the 25-403 factors

and how your case applies to them in the pre-trial statement.

Courtesy of **Alessia Fessel**, Community Legal Services

The Adobe Acrobat Bookmarks tool is a simple yet effective device for a more efficient and organized navigation of lengthy documents. One of the challenges that can come with working remotely and from home is not having immediate access to standard filing resources. Found on the left-hand side of a PDF file, Bookmarks helps create a customizable table of contents and provides immediate access to a certain page or section. For example, when opposing counsel emails a large PDF file containing hundreds of unmarked pages of exhibits, you can review the entire file once and Bookmark the beginning of each exhibit as you proceed. As each exhibit is Bookmarked, one can navigate immediately from one to another without wasting time on scrolling and making a manual record of the entire file's contents. Bookmarks can be effectively compared to as the electronic version of numbered filing tabs. Today's legal practice is becoming increasingly more virtual and less physical. In today's electronic age, Adobe Bookmarks is highly recommended for management of lengthy files and is a must for all electronic documents.

Courtesy of **Timothy Radovich**, Fromm Smith & Gadow, P.C.

The Family Law Section regularly prepares a summary of recent Arizona family law decisions. Summaries are located on the Section's web page at:

<https://www.azbar.org/for-lawyers/communities/sections/family-law/case-law-updates/> 

IMPORTANT : CLE DATES**December 1-3****State Bar Virtual
Convention 2020****July 7-10, 2021****CLE by the Sea****August 1, 2021****Legal Specialization
Applications Due****October 1, 2021****Late Legal Specialization
Applications accepted**

Want to contribute to the next issue of Family Law News?
... If so, the deadline for submissions is Jan. 15, 2021.



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:

ANNIE M. ROLFE, FAMILY LAW ATTORNEY

Rolfe Family Law, PLLC

2500 N. Tucson Blvd., Suite 120

Tucson, Arizona 85716 | (520) 209-2550

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.

Contact us!



We reserve the right to edit submissions for clarity and length and the right to publish or not publish submissions. Views or opinions expressed in the articles are those of the author. The Council invites those with differing views and opinions to submit articles for the newsletter. Thank you from the Family Law Executive Council and the State Bar of Arizona.