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**Deep Dive into Complex Asset and  
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**July 8-10, 2022**

**8:15am - 12:30pm**

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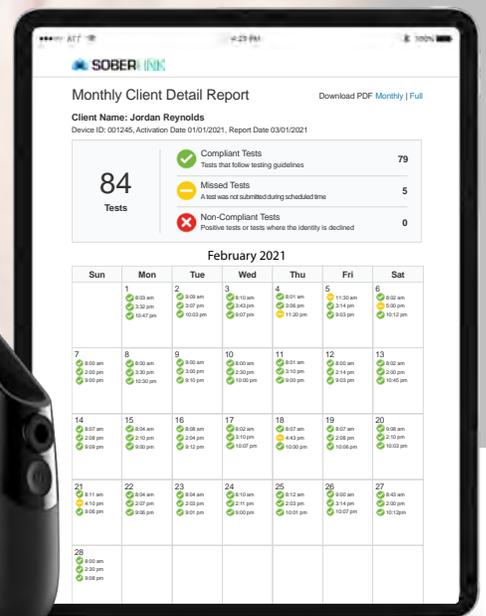
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	1 8:00 am 9:30 pm 10:47 pm	2 8:00 am 9:30 pm 10:03 pm	3 8:00 am 9:30 pm 8:07 pm	4 8:00 am 9:30 pm 11:20 pm	5 8:00 am 9:30 pm 10:00 pm	6 8:00 am 9:30 pm 10:12 pm
7 8:00 am 9:30 pm 9:00 pm	8 8:00 am 9:30 pm 10:00 pm	9 8:00 am 9:30 pm 8:19 pm	10 8:00 am 9:30 pm 8:00 pm	11 8:00 am 9:30 pm 8:20 pm	12 8:00 am 9:30 pm 8:00 pm	13 8:00 am 9:30 pm 10:45 pm
14 8:00 am 9:30 pm 8:00 pm	15 8:00 am 9:30 pm 8:00 pm	16 8:00 am 9:30 pm 8:12 pm	17 8:00 am 9:30 pm 8:00 pm	18 8:00 am 9:30 pm 10:07 pm	19 8:00 am 9:30 pm 10:00 pm	20 8:00 am 9:30 pm 10:03 pm
21 8:11 am 9:30 pm 9:06 pm	22 8:04 am 9:30 pm 9:06 pm	23 8:04 am 9:30 pm 8:05 pm	24 8:10 am 9:30 pm 8:05 pm	25 8:12 am 9:30 pm 10:01 pm	26 8:00 am 9:30 pm 10:07 pm	27 8:40 am 9:30 pm 10:10 pm
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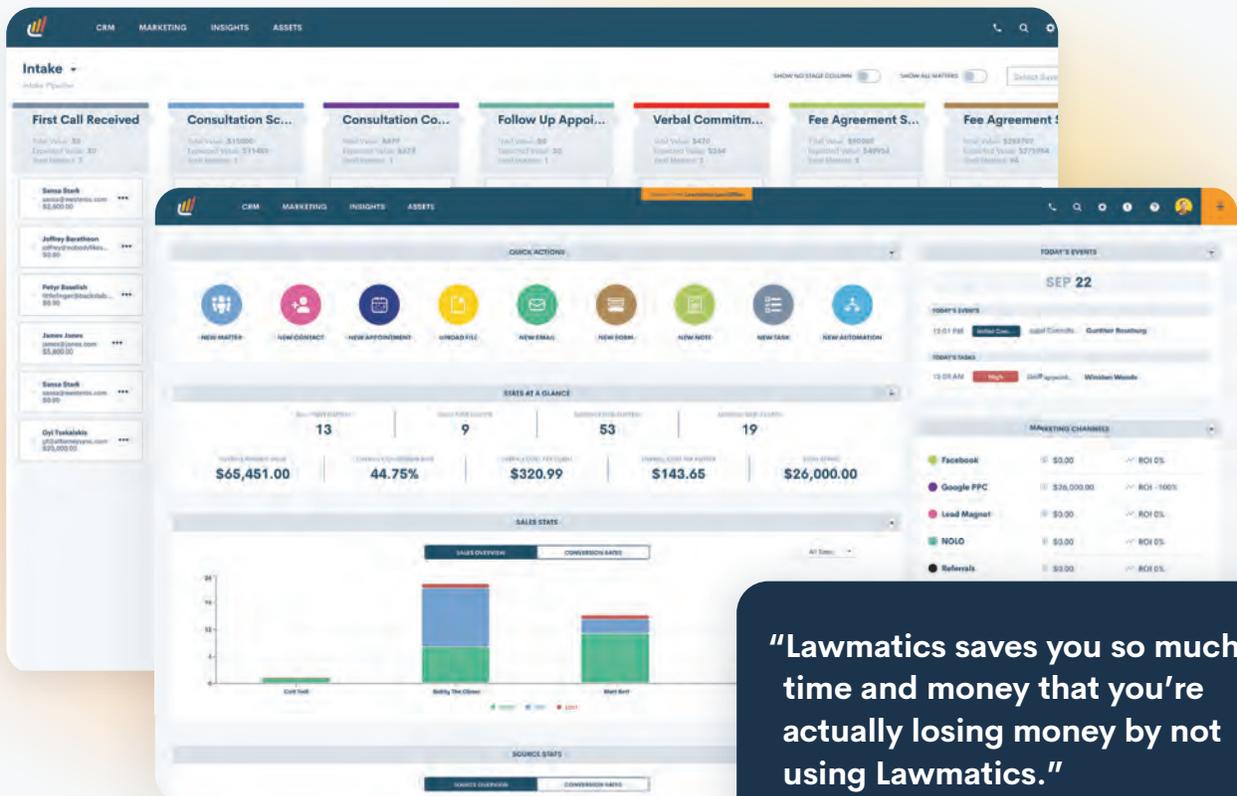
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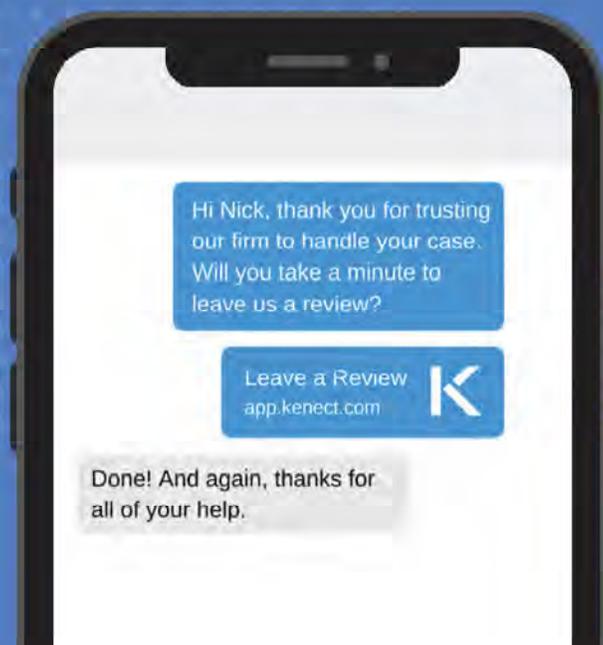
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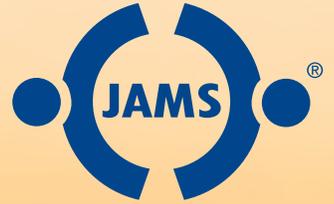
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**CLE by the Sea**  
**Family Law Track**  
**July 8 – 10, 2022**

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## 2022 CLE by the Sea Family Law Track Agenda

### Family Law: Deep Dive into Complex Asset and Child Related Litigation & Settlement

July 8-10, 2022

#### July 8, 2022

- 8:15 am**      **Complex Financial and Business Cases for Family Lawyers**  
Jason Naimi, Sandra Mayberry, David Horowitz, Gloria Cales, Erica Leavitt
- 10:15 am**      **Break**
- 10:30 am**      **Using experts and outside resources in court**  
Honorable Stasy Avelar, Honorable Marvin Davis, Jason Naimi, Sandra Mayberry, David Horowitz, Gloria Cales
- 12:30 pm**      **Adjourn**

#### July 9, 2022

- 8:15 am**      **Legislative and Rule Changes**  
Erica Leavitt
- 9:15 am**      **Child Support Guidelines Update**  
David Horowitz
- 10:15 am**      **Break**
- 10:30 am**      **Opening and Closing Tips and Best Practices**  
Honorable Stasy Avelar, Honorable Marvin Davis, Jason Naimi
- 12:30 pm**      **Adjourn**

#### July 10, 2022

- 8:15 am**      **Exhibits, Evidence**  
Honorable Stasy Avelar, Honorable Marvin Davis, Erica Leavitt, Jason Naimi, Gloria Cales
- 10:15 am**      **Break**
- 10:30 am**      **Litigation and Settlement Techniques in Complex Cases Involving Children**  
Honorable Stasy Avelar, Honorable Marvin Davis, Jason Naimi, David Horowitz, Gloria Cales, Erica Leavitt
- 12:30 pm**      **Adjourn**

## 2022 CLE by the Sea: Family Law Track

July 8-10, 2022

### Faculty Biographies

**HONORABLE STASY D. AVELAR** (fka Click) was appointed by Governor Doug Ducey as a Superior Court Judge in March of 2021. Before her appointment to the bench, Judge Avelar practiced law in Arizona for 28 years. She is a former prosecutor and law school instructor and ran her own law practice for 12 years. She tried hundreds of family and criminal cases throughout her career. She was Of Counsel to the ASU Alumni Law Group, the first teaching law firm/residency program for new attorneys in the nation, where she supervised new attorneys in the area of family law. She was an Adjunct Professor of Law at the Arizona Summit Law School teaching courses in family law, community property and running the Family Law Legal Clinic which allowed Law Students to represent families during their family law proceedings. In 2001, she started the Victim's Legal Assistance Project at the ASU College of Law, which allowed Law Students and volunteer attorneys to represent victims in criminal law proceedings to assert their victim's rights, including one appeal to the United States Supreme Court. She served as a Judge Pro Temp in both family and criminal court, as well as a Court Appointed Advisor for family court. She was an active volunteer for Community Legal Services as well as Wills for Heroes, receiving the 2010 President's Volunteer Service Award and was recognized by her peers as a Super Lawyer for ten years. Judge Avelar has participated extensively in bar activities, particularly those involving family law. Judge Avelar received her Bachelor of Arts degree, cum laude, from Drake University in Des Moines, Iowa in 1990. She received her Doctor of Jurisprudence degree from the University of Arizona in Tucson, Arizona in 1993.

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

**HONORABLE MARVIN L. DAVIS** is a Judge with the Maricopa County Superior Court. Marvin graduated from the University of Arizona where he earned his Bachelor's Degree in Psychology (Magna Cum Laude) in 2001. Marvin earned his Juris Doctor Degree from ASU's Sandra Day O'Connor College of Law in 2004. Marvin began his legal career with the Maricopa County Public Defender's Office in May of 2004. In September of 2007, he went into private

practice until he was appointed as a Commissioner with the Maricopa County Superior Court in March of 2017. On April 18, 2020, Governor Ducey appointed Marvin to the Maricopa County Superior Court as a Judge. He currently serves in the Family Division. Outside of his legal career, Marvin enjoys spending time with his wife Erica and their four children (Zachary, Jadon, Aubrey, and Braxton). He also enjoys coaching football, traveling, hiking, and reading history books.

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

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

**SANDRA L. MAYBERRY** brings 25 years of Family Law experience to Parks and Solar, including complex and high asset cases. She has practiced in San Diego County, exclusively in Family Law, for 25 years and has been a Certified Family Law Specialist, from the California State Bar Board of Legal Specialization for more than 18 years. She has been a Fellow with the American Academy of Matrimonial Lawyers since 2012. She has been active in various aspects of the San Diego County Family Law Bar Association and San Diego County Bar since she began practice. She practices in all four County court houses, including North County, South Bay, East County and Downtown and frequently in the private judge arena. She handles all aspects of Family Law litigation, including complex child custody and relocation cases and sophisticated financial issues. She provides consultation to clients who are participating in mediation as well. Her trademark calm but aggressive manner has served numerous clients in

their complicated, high conflict custody cases or their sophisticated financial issues. She has represented numerous parents in their cases involving relocation of children whether they are in favor of the move or opposed to the move. She has extensive experience with custody evaluations and the use of custody experts. She handles premarital agreement preparation and review or litigation involving such agreements when the marriage breaks down.

**JASON NAIMI** is the managing partner of Naimi & Cerceo, a boutique Nevada family law firm with both statewide and international clients. A valued and energetic litigator, Jason is also an executive and senior faculty member of the National Family Law Trial Institute in Houston, Texas. Jason holds the “hat trick” (he’s a hockey fan) of specializations qualifying as a Nevada Board Certified Family Law Specialist, and a fellow to both the American Academy of Matrimonial Lawyers and the International Academy of Family Lawyers. He remains active in all levels of the development of continuing legal education with the State Bar of Nevada and Chairman of the Family Law Specialization Committee for the Board of Bar Examiners in Nevada. Jason is a member of the Executive Council for the Family Law Section of the State Bar of Nevada and the International Academy of Family Lawyers, where he is currently servicing as Assistant Treasurer. In his spare time, Jason loves to spend time with his wife and daughters, cheering on his favorite sports teams and playing golf badly with friends and family. Contact: 702.901.4800; [jason@naimicerceo.com](mailto:jason@naimicerceo.com)

# Complex Financial Business Cases for Family Lawyers

---

ERICA LEAVITT, GLORIA CALES, DAVID HOROWITZ, SANDRA  
MAYBERRY, AND JASON NAIMI

1

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*Meister v. Meister*, 252 Ariz. 391 (App. 2021)

2

Factual Background:

In this case, both parties had been involved with the business prior to date of service. Wife's involvement in the business ended after the date of service, and Husband alone managed the business after Wife's exit. This arrangement was made as it was presumed that Husband would buy Wife out of her portion of the business. After Wife's exit from the business, and in violation of a court order, Husband sold 1.4 million dollars worth of business assets. At the time of trial, the business was entangled in lawsuits and had lost its main customer, decimating the business income.

Wife hired Kotzin who opined that the proper valuation date was March 31, 2017 because that was an end-of-quarter-date close to the date of service. He relied primarily on the "single period capitalization method" for his valuation because he anticipated that PBS's future performance "will not differ significantly from historical financial results." Kotzin acknowledged that PBS lost ADB as a customer within a month after March 31, that ADB had been the source of roughly 90% of PBS's revenue, and that PBS would not collect the Receivable. But Kotzin opined it was inappropriate to consider those facts in valuing the company because they were neither "known [n]or knowable" on March 31, 2017.

Husband hired Hughes, who opined that PBS should be valued as of December 31, 2017, when the full consequences of PBS's falling out with ADB had become apparent. Hughes valued PBS's fair market value at \$1,120,000. Hughes also challenged Kotzin's valuation on four grounds, summarized as follows: (1) termination of the Blasting Contract was known or knowable as of March 31, 2017 because Fisher was investigating PBS's billing practices; (2) Kotzin erred by relying on a 31.9% gross profit margin projection (with \$9.2 million revenue) in perpetuity; (3) Kotzin did not account for increased risk based on Fisher having obtained its own blasting permit in 2015; and (4) Kotzin should not have included the Receivable in projected revenues, given that PBS had written it off on its 2017 tax return.

The trial court relied on Wife's valuation expert's opinion (in part because of the lack of known or knowable changes); and that Husband had managed the business after Date of Service; ordered Husband to buy out Wife's interest at this value; ordered Husband to pay a business obligation owed to Wife's brother which was also incurred prior to date of service; and that Wife had made a prima facie showing to support her waste claim and that claim was "granted and embedded in the distribution of property". Husband appealed on all these issues.

3

Valuation date issue.

The Court reaffirmed the long standing principle that community property must be divided equitably, though not necessarily in kind, without regard to marital misconduct. The court also has wide discretion in apportioning community property. The court's discretion includes the ability to choose a valuation date for community assets. Invoking Sample, the court recognized that the equitableness of property distribution is the very touchstone of a property apportionment. Accordingly, the trial court must be allowed to utilize alternative valuation dates. On appeal the court must assess whether the superior court's choice of a valuation date reached an equitable result that "stands the test of fairness on review".

The Court then explained that there is no Arizona authority mandating or even suggesting a community asset must be valued at or near the date of service. Rather, the trial court is to choose a date that is just and equitable. The choice of a valuation date should be dictated by pragmatic considerations and must comport with principles of fairness and equity. This is the touchstone of A.R.S. §25-318(A).

The Court then held that the trial court erred when it did not consider that the conduct that resulted in the loss of the primary contract was attributable to Husband's conduct before the date of service. And that Wife benefitted from the fruits of Husband's over-billing (that led to the loss of the customer) and was working for the business when the over-billing occurred. The Court concluded it would be "inequitable" to use Hughes's valuation date because the loss of the Blasting Contract and the Receivable were not "reasonably foreseeable." But the court failed to explain, and the record does not reveal, how the lack of foreseeability about losing the Blasting Contract and Receivable justified valuing the company as of that date.

The court expressed no opinion on whether the valuation of a business for any other purpose should turn on whether a specific event is foreseeable as of the date of valuation. But when a court is valuing a community asset in a dissolution proceeding, it triggers different considerations, and otherwise "standard" valuation approaches must yield to the overarching principles of equity. There is no authority suggesting that foreseeability should control the court's choice of a valuation date. Because the trial court did not make specific findings about the equitableness of the valuation date, the court abused its discretion to the extent it selected the valuation date based on Wife's expert's opinion that the loss of the contract was not foreseeable.

4

b. Waste.

If a court finds a party committed waste that reduced the value of a community business, it may consider such waste in selecting a valuation date for the business. On the other hand, if a court finds that waste did not affect the value of the business, but did impact other marital assets, the court may when apportioning that property take that into account. However, the trial court conflated Wife's claims of Husband's post date of service financial mismanagement with the selection of Wife's expert's proposed valuation date based on whether the subsequent events were knowable. As such, neither the record nor the court's ruling showed how Husband's poor management or wasteful spending impacted the value of the business such that it was decimated by 95%.

Sufficient findings of fact are required. Absent a proper request from a party that triggers mandatory separate findings of fact and conclusion of law, no bright-line rule exists as to what a court must include in addressing whether a selected valuation date is equitable. However, the court must provide enough analysis, however labeled, to allow the appellate court to decide whether the ruling withstands the test of equity and fairness. When the court's ruling lacks such analysis, the appellate court cannot merely presume that the valuation date complies with Sample.

5

*Larchick v. Pollock, 252 Ariz. 364 (App. 2021)*

---

6

Factual Background:

Wife owned a pre-marital business. After marriage, Wife formed a new LLC to purchase a building for the use of her pre-marital business. Wife claimed that all of the funds used to acquire the office were her separate property. The community signed a guarantee for the mortgage payment; however, she produced no evidence proving this claim. During the course of the litigation, the trial court decided some, but not all, of the issues and entered an incomplete decree known as a Brown Decree. This Decree deferred the business valuation and lien issues to a later date.

At the valuation trial, Husband disclosed a Calculation of Value report created by his expert. Husband's expert noted in his engagement letter that he would not testify as to a Calculation of Value at trial; and that if it went to trial he would require that the calculation schedules be upgraded to a formal summary valuation report. Wife's expert, on the other hand, produced a full appraisal. Both experts were present during trial. The Court sustained Wife's objection to the Calculation of Value. Husband then attempted to call Wife's expert who was present in the courtroom. The Court sustained Wife's objection to this based on the fact that Husband had not subpoenaed Wife's expert. Without producing further evidence, Wife moved for a directed verdict on the issue of a community interest in an increase in value of her pre-marital business, which the Court sustained.

The Court also held that the building was Wife's separate property based on Wife's assertion that she had paid the remainder of the price with her separate funds; that no default on the mortgage had occurred; and that the building had been sold.

7

Brown Decree

The Court first reminded the trial court that Brown Decrees are a violation of A.R.S. 25- 312(4). Indeed, the statute provides that the court can enter a decree of dissolution only if it has made provision for the disposition of property. The Court erred by bifurcating its ruling, but this did not void the dissolution. The Court further held that the error does not deprive the appellate court of jurisdiction.

Rule 702 and Admissibility of Expert Testimony

Although Rule 702 "recognizes that trial courts should serve as gatekeepers" to ensure expert evidence is reliable (and helpful) to the finder of fact, this "gatekeeping function is not intended to replace the adversary system." Rather, "cross-examination, presentation of contrary evidence, and careful instruction on the burden of proof are the traditional and appropriate means of attacking shaky but admissible evidence." Nothing in Rule 702 requires an expert to account for all possible methods of assessment. In excluding Husband's expert's report, the court erred because it deferred to the expert's understanding of what evidence would be admissible. This is the expert's personal view; the expert is not qualified to offer a legal opinion. Even though a "calculation of value" opinion may be short of the gold standard, it is not per se unacceptable or inadmissible. The court is free to give the opinion little or no weight, but not to exclude it altogether. All that is necessary is for the court to make sure the evidence clears the reliability threshold.

When a witness listed for trial is present in the courtroom, whether the witness was subpoenaed to be present is irrelevant. A party may call to the witness stand any witness properly noticed and present.

8

Directed Verdict

The trial court erred when it granted Wife's directed verdict on the issue of a community interest in an increase in value of her pre-marital business. In her pretrial statement, Wife admitted an increase in value. The Court of Appeals held that Wife was bound by this admission as a party is bound by an admission against interest.

Sole and Separate Property Claim

The Court of Appeals held that Wife failed to prove her separate property claim to the building by clear and convincing evidence. The trial court erred by dismissing Husband's community claim to the property. In providing its reasoning, the Court of Appeals explained that the trial court erroneously relied solely on Wife's word. This was error because the spouse contending property acquired after marriage is separate property must prove this by clear and convincing evidence. Wife's word alone did not meet this burden.

9

*Femiano v. Maust*, 248 Ariz. 613, (App. 2020)

*Saba v. Khoury*, 250 Ariz. 492 (App. 2021)

10

Femiano and Saba are conflicting cases that came out of the Court of Appeals, Division One. The Supreme Court granted review of Saba, and heard oral argument in October (2021), but no Opinion has been issued yet.

Femiano and Saba rest on similar facts. In both cases the parties purchased property after marriage with community funds, and thereafter paid all of the mortgage. One party obtained the mortgage in their name alone and took title as separate property because of the other party's credit issues. The Non-Titled Party signed a Disclaimer Deed. Fraud either was not pled, or was pled untimely.

In Femiano, the Division One found that the correct formula to determine a community lien was to give the community credit for 100% of the reduction in principal (because the community made all the payments); and to give the community a lien for 100% of the appreciation. Effectively, it prioritized home equity as the basis for the lien. Unlike Drahos and related cases, Femiano involved property acquired during marriage and paid for solely with community funds. Thus, the case was found distinguishable from Drahos, where property was acquired during marriage, and both separate and community funds had been expended during marriage.

In Saba, Division One held that a Disclaimer Deed cannot be analyzed as a post nuptial agreement under *In re Harber* because a Disclaimer Deed is signed by just one party; and do not define each spouse's property rights in the event of death or divorce— they simply renounce ownership in property. The Disclaimer Deed effectively justifies the windfall that a Drahos formula produces in favor of the Titled Party. However, a Disclaimer Deed does not cause the non-owning party to forfeit a community lien. The Court then applied Drahos, where the formula for a community lien is (CRP), which community reduction to principal; plus (CRP/PP\*(TA), which is the community's share of appreciation, expressed as a fraction, – the numerator is the community reduction in principal and the denominator is the purchase price – multiplied by the total appreciation.

The result is a dramatically reduced lien compared to the Femiano approach. That is because Drahos does not focus on home equity. Instead, the goal is to reimburse the community for principal contributions and reward those contributions with a proportionate share of appreciation. In Saba, the community lien was \$68,558 based on the Drahos formula where CRP (\$39,741) = community reduction to principal; PP (\$199,900) = the purchase price; and TA (\$145,110) = total appreciation. Applying the Femiano formula to the same example would net a community lien of \$184,851 (\$39,741 + \$145,110).

Additionally, the fate of disclaimer deeds hang in the balance.

11

*Defrancesco v. Defrancesco*, 248 Ariz. 23 (App. 2019)

12

Husband was a salaried employee of the Astros during the majority of 2017. The occasion for the bonus (and the source of the monies from which the bonus was paid) was the Astros' success in the 2017 playoffs, culminating in a World Series victory. Husband argued that this was his sole and separate property. Wife argued that it was community property.

Wife took the position that as a manager in the Astros' farm system, Husband had a legal entitlement to a share of the monies awarded to the team from the playoff pool. However, she did not provide any evidence to support this position. Nor did Wife offer any evidence that the salary the Astros paid him did not adequately compensate him for his labor during the season. In sum, there is no suggestion in the record that the Astros' decision to share their playoff proceeds with Husband was anything but "a gift which, although in recognition or appreciation of some individual merit, is actually in the nature of a simple gift inspired by charity, affection, liberality or the like."

The Court held that when a payment is received before service of a dissolution petition, the presumption is that it belongs to the community. But the presumption may be overcome, and in analyzing this question, Arizona courts have considered, as in *Van Loan and Garrett*, whether the payment relates to services rendered during the marriage.

13

*Stock v. Stock, 250 Ariz. 352 (App. 2020)*

14

The community is entitled to reimbursement for community funds used to purchase a credit for Husband's pre-marriage federal service. Wife, in turn, is entitled to receive her portion of that reimbursement plus interest from the time of purchase. The community, however, did not acquire an ownership interest in retirement benefits attributable to Husband's pre-marriage service.

As such, the trial court erred when it awarded Wife half of the credit for Husband's pre-marital service time purchased using community funds. Instead, the court should have awarded Wife her share of the community funds used to purchase that credit plus attributed her interest from the time of purchase. Furthermore, Wife should be awarded her share of the community's interest in Husband's retirement benefits excluding Husband's pre-marriage service credit.

15

*Bowser v. Nguyen*, 249 Ariz. 454(App. 2020)

16

Husband received a negotiated severance pay package. It was deemed to be community because Husband's employment began and ended during the marriage and community labor was expended in its acquisition. When community labor is expended in the acquisition of a future severance package, the community is entitled to a share of the severance, even if the severance was negotiated and paid after a petition for dissolution is filed.

17

**Silva v. Silva, (Memorandum decision) 1 CA-CV 19-0684FC (App. 2020).**

18

The court ordered Husband to pay 80% of the community debt. Husband appealed citing that such a division of debt was inequitable under the law. Division One affirmed. In so doing, the Court held as follows:

- The superior court has broad discretion in apportioning community property and debt between parties at dissolution. *Boncoskey v. Boncoskey*, 216 Ariz. 448, 451, ¶ 13 (App. 2007).
- We presume that debts incurred during marriage are community obligations unless the party seeking to overcome this presumption provides clear and convincing evidence to the contrary. *In re Marriage of Flower*, 223 Ariz. 531, 537, ¶ 24 (App. 2010).
- Under A.R.S. §25-318, community property is to be divided “equitably” absent a sound reason otherwise appearing in the record. See *Toth v. Toth*, 190 Ariz. 218, 221 (1997); see also A.R.S. §25-318.c (family court may consider excessive or abnormal expenditures, destruction, concealment or fraudulent disposition of community property when dividing such property at dissolution). “ ‘Equitable’ is a concept of fairness dependent upon the facts of particular cases.” *Toth*, 190 Ariz. at 221.¶21.
- An equitable distribution of property need not be exactly equal “but must result in substantial equality.” *Miller v. Miller*, 140 Ariz. 520, 522 (App. 1984); See *Flower*, 223 Ariz. At 537, ¶24(“Division of property upon dissolution should.... take into consideration the overall marital estate.”);
- See also *Neal v. Neal*, 116 Ariz. 590, 594 (1977) (approving consideration of “future earning ability” in the apportionment of community obligations).

19

*Andrews v. Andrews*, 252 Ariz. 415 (App. 2021)

20

pay \$2,200 a month to Wife as spousal maintenance and to pay certain home loan and other expenses. However, the Court noted that the payment of expenses might be subject to an equalization later one.

Division One reversed and remanded in part, holding as follows:

In a case of first impression in Arizona, Division One followed California and Colorado and held that the characterization of accrued vacation pay hinges on whether or not it is reimbursable or otherwise constitutes deferred compensation. If it is, then it is community. Property earned through a spouse's labor is community property even if not received until later (similar to retirement plans). If the reimbursement is conditional (it constitutes an alternative form of wages, then it would be separate property because it would be speculative).

The court distinguished the Helland case which classified disability payments received post date of service as separate property even though the community had maintained the policy prior to date of service. A disability policy is not an annuity or other investment with an expected rate of return as disability benefits are paid only under certain conditions and are contingent upon the insured's ongoing disability— and so the community did not acquire a right to future disability benefit payments when it purchased the policy.

The court upheld the spousal maintenance award holding it has wide discretion in this area. Husband had argued that Wife's conduct contributed to her health problems and inability to work full-time. Wife had admitted to having dogs, vaping and occasionally smoking; but Wife's medical expert testified that eliminating these issues does not always alleviate significant asthma.

The trial court abused its discretion by denying Husband's reimbursement claim as to loan payments he made on the marital residence. When a divorcing spouse pays community obligations after a petition for dissolution is filed, the matrimonial presumption of a gift does not apply. *Bobrow v. Bobrow*, 241 Ariz 592 (2017). The payor has the burden of proof to show the amount of his claim. The trial court concluded husband had failed to disclose credible evidence to support his claim; but Husband contended that Wife had admitted his claim. In fact, Wife had testified that Husband had made various payments on the debt after date of service. Based on the record, Division One concluded that Husband failed to meet his burden of proof to show the exact amounts. But in view of Wife's testimony regarding the mortgages, Division One found that a preponderance of the evidence established that Husband made payments somewhere within the range of the amounts identified by Wife. The trial court abused its discretion by disregarding that evidence. Division remanded so the trial court could consider Husband's reimbursement claim regarding the mortgage residence payments only.

21

*Gelin v. Murray*, 251 Ariz. 544 (App. 2021)

22

In this paternity action, the Court granted retroactive child support under A.R.S. § 25-809(A)-(B) to the date the petition was filed. It did not grant Mother's request to order support for the three years prior, finding that Mother deliberately kept Father out of the Child's life.

Mother appealed. In her appeal, she argued that an award going back three years was mandatory absent a valid equitable defense by Father. Division One denied Mother's appeal and used the occasion to clarify the extent of the court's discretion on this issue:

- a. The analogue to A.R.S. § 25-809(A) for divorcing parents is A.R.S. § 25- 320[C], and both statutes should be interpreted the same way.
- b. The court must grant retroactive child support to the date of the filing of the Petition.
- c. The Court may in its discretion grant child support going back three years without making findings on equitable defenses.
- d. The Court must make explicit findings if it orders child support retroactive to a date earlier than three years.
- e. Case law to the contrary, including *DES v. Valentine*, 190 Ariz. 107 (app. 1997) was superseded by the amendment to A.R.S. § 25-8098(A).

f. Even though the Court's findings about Mother's misconduct (that Mother acknowledged paternity, while at the same time listing another person as the father on the child's birth certificate; that she had moved multiple times without informing Father; and that she excluded Father from the child's life) may not necessarily establish an equitable defense, they do support the exercise of the court's discretion.

23

#### CHILD SUPPORT GUIDELINES

The new Child Support Guidelines have been the topic of endless discussion. This is not intended as a comprehensive guide. It only highlights some of the more interesting information.

- Organization. Note the scarily careful organization of the factors in the guidelines – the worksheet and guidelines go in order with each other. It is being beta-tested to have hyperlinks to specific findings. There's also a correlation table that compares the prior guidelines (following the CS tables).
- Effective Date. Guidelines will be in effect as of 1/1/2022 – the new guidelines will be employed for cases that haven't been decided yet on those issues – you'll have to use the new calculators.
- The Formula. Basic child support obligation charts calculates the combined gross income of the parties for average normal people with average normal children; then the next factors implement certain expenses for the particular family and the particular children; then divides the percentage of responsibility to each individual parent
- Gross Income is called "child support income" – any source before any deductions or withholding.
- Attribution. Look at Section 4 of income for "attributing" income – gives explicit explanations of when income should or should not be attributed. When you are attributing income, and it's higher than minimum wage – don't have to attribute 40 hours at that rate if it's higher than minimum wage.
- Tax affecting spousal maintenance. This was long included as an automatic deduction to the gross income in the worksheet; however, because of the tax cut and jobs act of 2017 eliminating the tax deduction for paying spousal maintenance, there is now specific language that the Court has the discretion to account for the tax impact – that parent would have had to gross more money to pay that SM (isn't deductible any more).
- New Economic Data. The basic child support amount is now really driven by economic data / how spending occurs / and that the numbers support going to \$30,000/month cap for the combined income – now there is more instruction on making requests to deviate higher than the basic child support tables provide for – See Section IX.

24

- Adjustments other children. When making adjustments for other children in the household, there are more specifics for this.
- Self Support Reserve. Simplified, but also made flexible – as minimum wage changes, it's flexible – 80% of MW at 40 hrs/wk. If a court is going to apply SSR test and either diminish or reduce CSO to zero, Court must look at impact on the receiving parent's household.
- Deviation. The burden is on the person arguing for a higher amount than the obligation showing when combined income surpasses \$30K/month –have to look at best interests factors and any needs the child may have in excess of the guidelines. Look at Section IX – deviation based on the circumstances of each case. It now says that if a parent comes to a compromise on any specific factor in the worksheet, that is not considered a “deviation”.
- Medical Insurance. Medical insurance to be credited – if ins provided by a stepparent, the parent will get credit for that in the worksheet.
- Childcare expenses – there is a clarification for third-party caregivers that are family members who can be claimed as a dependent.
- Parenting time adjustments. Parenting time credit table has been significantly adjusted – there's only one now – the maximum number of days that has been accounted for is 164 days – once you hit that 164 days, that will be treated as an equal time parenting time schedule – entire table has been simplified - the most common PT plans are going to fall within a specific range. Look at the examples for families with multiple children with different parenting plans
- Denial of tax benefit. If you want to deny the other parent a tax benefit due to non-payment, the burden is on the parent who is wanting to deny it.

# CLE By The Sea 2022

## CO-CHAIRS

Gloria L. Cales, Esq.  
Gloria L. Cales, P.C.

David Horowitz, Esq.  
Warner Angle Hallam Jackson &  
Formanek PLC

# Navigating the Family Court

## 2B Or Not 2B

### *Applicability of Arizona Rules of Evidence:*

- Must provide at least 45 days before a Hearing or Trial
- If not filed, *Arizona Rules of Evidence* (602, 801-807, 901-903, 1002-1005) the other Rules of Evidence Rule 403 still apply, except as provided in Sections (C) and (D)
- Section (C)- a record of regularly conducted activity is defined in 803 (6)

1 Attorney Name and Bar Number  
2 FIRM INFORMATION  
3 Address  
4 City, State and Zip  
5 Phone Number  
6 Email:  
7 Attorney for Respondent

8 SUPERIOR COURT OF ARIZONA IN MARICOPA COUNTY

9 In re the Marriage of: )  
10 JANE SMITH, )  
11 Petitioner, )  
12 and )  
13 JOHN SMITH, )  
14 Respondent. )  
15 \_\_\_\_\_ )  
16

No. FC2022-0000000

**NOTICE REQUIRING STRICT  
COMPLIANCE WITH THE  
ARIZONA RULES OF EVIDENCE**

(Assigned to the Honorable Joe  
Blow)

17 COMES NOW the Respondent, JANE SMITH, pursuant to Rule 2(b)(1) of the  
18 *Arizona Rules of Family Law Procedure*, and hereby requests that this Honorable Court require  
19 strict compliance with the Arizona Rules of Evidence in all evidentiary proceedings herein.

20 DATED this 7<sup>th</sup> day of July, 2022

21  
22 ATTORNEY FIRM

23  
24 By: \_\_\_\_\_  
25 Attorney name  
26 Attorney address  
27 Attorney City, State and Zip  
28 Attorney for Respondent

# Unused Tools

Motion For Summary Judgment

Request For Admission



# Motion For Summary Judgment

- Remember to file a Motion, a separate Statement Of Facts with reference to the record and an Affidavit pursuant to Rule 79 *ARFLP*
- A Response requires a separate controverting Statement Of Facts with reference to the record

# Request For Admission

- Rule 64.
- Can be submitted for purposes of pending action
- Each request must be separately stated
- Limited to 25 Requests
- Responses are due in 40 days after servicing
  - Must be signed by the party and the attorney
- Affirmative response is deemed admitted

# Helpful Reminders

- ❖ Make sure that your client timely completes the Parent Information Class

- ❖ Verify that discovery is timely completed and that responses are appropriately responded to

- ❖ Verify the math in your AFI

- ❖ Too often the client has expenses significantly higher than their income

- ❖ Clients are often confused by the income selections on the AFI

# Helpful Reminders

- ❖ If the parties have children, prepare a Parenting Plan sooner rather than later
- ❖ Read Rule 59. as it relates to Depositions
- ❖ You cannot merely attach the entire Deposition Transcript
  - ❖ Read Rule 59 (c)
    - Sets forth the form of presentation
- ❖ The party intending to use the Deposition must designate the parts to be offered by page and by number
- ❖ This must be included in any Pretrial or Prehearing Statements

# Helpful Reminders

Any objection  
available at a  
Deposition is  
only as to “Form”

## Rule 57. Depositions by Oral Examination

### **(c) Examination and Cross-Examination; Record of the Examination; Objections; Conferences Between Deponent and Counsel.**

(1) *Examination and Cross-Examination.* The examination and cross-examination of a deponent must proceed as they would at trial under the Arizona Rules of Evidence including Rule 615. Parties may not make evidentiary objections, including relevance objections. Any party not present within 30 minutes after the time specified in the notice of deposition waives any objection that the deposition was taken without the party's presence. After putting the deponent under oath or affirmation, the certified reporter personally--or a person acting in the presence and under the direction of the officer--must record the testimony by the method(s) designated under Rule 57(b)(3).

(2) *Objections.* A certified reporter must note on the record any objection made during the deposition--whether to evidence, to a party's, deponent's, or counsel's conduct, to the officer's qualifications, to the manner of taking the deposition, or to any other aspect of the deposition. An objection must be stated concisely, in a nonargumentative manner, and without suggesting an answer to the deponent. Unless requested by the person who asked the question, an objecting person must not specify the defect in the form of a question or answer. Counsel may instruct a deponent not to answer--or a deponent may refuse to answer--only when necessary to preserve a privilege, to enforce a limit ordered by the court, or to present a motion under Rule 57(d)(3). Otherwise, the deponent must answer, and the testimony is taken subject to any objection.

(3) *Conferences Between Deponent and Counsel.* The deponent and his or her counsel may not engage in continuous and unwarranted conferences off the record during the deposition. Unless necessary to preserve a privilege, the deponent and his or her counsel may not confer off the record while a question is pending.

### **(d) Duration; Sanctions; Motion to Terminate or Limit.**

(1) *Duration.* Unless the parties agree or the court orders otherwise, a deposition should be of reasonable length, is presumptively limited to 4 hours, and must be completed in a single day. An unreasonable refusal to extend deposition time may result in sanctions.

(2) *Sanctions.* The court may impose appropriate sanctions--including any order under Rule 65--against a party or attorney who has engaged in unreasonable, groundless, abusive, or obstructionist conduct in connection with a deposition, or who without good cause terminates or limits a deposition.

(3) *Motion to Terminate or Limit.*

# Helpful Reminders

CLIENT NAME: \_\_\_\_\_ Case No. \_\_\_\_\_

## DOMESTIC RELATIONS DISCLOSURE STATEMENT QUESTIONNAIRE

PLEASE PROVIDE THE INFORMATION REQUESTED BELOW AT YOUR EARLIEST OPPORTUNITY. THE COURT RULES REQUIRE YOU TO FULLY DISCLOSE INFORMATION WHICH IS RELEVANT TO YOUR CASE. TO FACILITATE YOUR ABILITY TO DO SO, WE HAVE PREPARED THIS PACKET FOR YOU TO FILL OUT. FOLLOWING ARE SOME GUIDELINES FOR YOU TO CONSIDER:

### DO:

Be accurate and thorough. If information is requested in more than one place, be consistent with your answers.

Disclose everything. There may be penalties for non-disclosure.

Disclose items belonging to your spouse and you.

Keep a record of any support paid or received related to this action.

Use additional paper if the space provided for an answer is insufficient.

Sign and date this form upon your completion.

Complete section IX on page 20 if you answered "yes" to question (C)(1) on page 15.

### DO NOT:

Worry that some information is requested in more than one place.

Worry about documents that are in your spouse's possession that you do not have. Simply indicate documents are in your spouse's possession.

Throw away pay stubs, charge card statements, bank statements, or any other documents that are relative to employment, accounts, assets or liabilities.

Come to the scheduled meeting without completing this packet to the best of your ability.

Pay cash for anything you want to prove later.

1

## I. ASSET INFORMATION

Include all information known to you, your spouse or both and indicate your opinion as to whether each such asset is **community property ("C/P")**, **your sole and separate property ("S/S")**, or **unknown ("UNK")** if you are unsure. If you claim an asset that is separate property, please indicate why you believe it is separate

### A. LIQUID ASSETS

Please provide copies of the **LAST TWELVE MONTHS statements** you received for each account if they are in your possession or reasonably accessible to you. If these documents are in the possession of your spouse or some other person, please indicate who has them.

#### 1. CHECKING ACCOUNTS **(PLEASE ATTACH COMPLETE BANK STATEMENTS)**

Name and address of Facility	Amount in account/as of what date	Last 4 digits of acct #	Signors on account	C/P, S/S or UNK	If S/S, why?

#### 2. SAVINGS ACCOUNTS **(PLEASE ATTACH COMPLETE BANK STATEMENTS)**

Name and address of Facility	Amount in account/as of what date	Last 4 digits of acct #	Signors on account	C/P, S/S or UNK	If S/S, why?

2

- Make sure that your client understands the significance of disclosure. Provide them a copy of Rule 49.

- Provide your client a Disclosure Questionnaire to Complete.

- With constant changes in types of assets, remember to update the disclosure questionnaire.

➤ Add things like Crypto currencies, frozen embryos, etc.

If you would like to review the Disclosure Questionnaire, you can email me: [GLC@glorialcalespc.com](mailto:GLC@glorialcalespc.com)

# Keeping Your Head Above Water

# Your Health Is Important

42% of law school students are clinically depressed when they graduate law school

Occupationally, lawyers have a very high suicide rate. Attorneys generally rate between 2 and 5 for suicide as the cause of death

Legal counselors may embrace social drinking

# Your Health Is Important

The American Bar Association performed a study that confirms lawyers have a higher percentage of people who abuse substances, compared to the general public.



The Study identified two factors: substance abuse and the presence of mental health problems such as anxiety and depression

Attorneys with less than 10 years of experience had substantially higher alcohol abuse rates when compared to senior professionals

## Female Lawyers Still Face Widespread Gender Bias

Women lawyers are more likely than male counterparts to be misinterpreted and given less access to prime assignments

A National Survey of law firm partners showed that male partners earned 49% more than female partners

# Support Services

- ❑ **AZBar Mentor Connection**  
Azbar.org/mentor – (602) 340-7290
- ❑ **Sections: Connect with 30 practice areas**  
Azbar.org/sections
- ❑ **Trust Account Hotline**  
(602) 340-7305
- ❑ **Looking for CLE?**  
**Catalog of Programs:** azbar.org/CLE  
**Publications:** azbar.org/pubs
- ❑ **For Law Practice Management Questions**  
**Contact Practice 2.0** for free confidential advice  
Azbar.org/practice20 – (602) 340- 7332
- ❑ **Ethics Hotline**  
(602) 340-7284
- ❑ **Fastcase Free Legal Research Tool**  
azbar.org/ fastcase –(866) 773-2782
- ❑ **MCLE Questions / CLE Tracking**  
azbar.org/ mcle - (602) 340-7305
- ❑ **Member Assistance Program / Peer Support**  
azbar.org/ map – (602) 340-7334



# Sailing To Success In Court

CLIENT: \_\_\_\_\_

**DOMESTIC RELATIONS DISCLOSURE STATEMENT QUESTIONNAIRE**

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Name and address of Facility	Amount in account/as of what date	Last 4 digits of acct #	Signors on account	C/P, S/S or UNK	If S/S, why?

2. **SAVINGS ACCOUNTS (PLEASE ATTACH COMPLETE BANK STATEMENTS)**

Name and address of Facility	Amount in account/as of what date	Last 4 digits of acct #	Signors on account	C/P, S/S or UNK	If S/S, why?

**3. MONEY MARKET ACCOUNTS (PLEASE ATTACH COMPLETE STATEMENTS)**

Name and address of Facility	Amount in account/as of what date	Last 4 digits of acct #	Signors on account	C/P, S/S or UNK	If S/S, why?

**4. CERTIFICATES OF DEPOSIT**

Name and address of Facility	Amount in account/as of what date	Last 4 digits of acct #	Signors on account	C/P, S/S or UNK	If S/S, why?

**5. CASH IN SAFE DEPOSIT BOXES**

Name and address of Facility	Amount in account/as of what date	Last 4 digits of acct #	Signors on account	C/P, S/S or UNK	If S/S, why?

**B. INVESTMENTS AND RETIREMENTS**

Please provide copies of the **LAST TWELVE MONTHS** statements you received for each account if they are in your possession or reasonably accessible to you. If these documents are in the possession of your spouse or some other person, please indicate who has them.

**1. STOCKS (PLEASE ATTACH STATEMENTS)**

Name of investment house or broker & number of shares	Amount in account/as of what date	Last 4 digits of acct #	Signors on account	C/P, S/S or UNK	If S/S, why?

**2. STOCK OPTIONS (PLEASE ATTACH STATEMENTS)**

Stock Options	Grant Date	Number of Shares	Strike Price	Vested?

**3. CRYPTO CURRENCY (PLEASE ATTACH STATEMENTS)**

Specify Bitcoin, Etherium, Litecoin	Amount in account/as of what date	Last 4 digits of acct #	Signors on account	C/P, S/S or UNK	If S/S, why?

**4. U.S. GOVERNMENT AND MUNICIPAL BONDS (PLEASE ATTACH STATEMENTS)**

Specify Name/Type of Bond	Amount in account/as of what date	Last 4 digits of acct #	Signors on account	C/P, S/S or UNK	If S/S, why?

**5. MUTUAL FUNDS (PLEASE ATTACH STATEMENTS)**

Name and Address of Facility	Amount in account/as of what date	Last 4 digits of acct #	Signors on account	C/P, S/S or UNK	If S/S, why?

**6. IRAs (PLEASE ATTACH STATEMENTS)**

Name and Address of Account Provider	Amount in account/as of what date	Last 4 digits of acct #	Signors on account	C/P, S/S or UNK	If S/S, why?

**7. PROFIT SHARING PLANS (PLEASE ATTACH STATEMENTS)**

Name and Address of Account Provider	Amount in account/as of what date	Last 4 digits of acct #	Signors on account	C/P, S/S or UNK	If S/S, why?

**8. 401K (PLEASE ATTACH STATEMENTS)**

Name and Address of Account Provider	Amount in account/as of what date	Last 4 digits of acct #	Signors on account	C/P, S/S or UNK	If S/S, why?

**9. PENSION PLANS (PLEASE ATTACH STATEMENTS)**

Name and Address of Account Provider	Amount in account/as of what date	Last 4 digits of acct #	Signors on account	C/P, S/S or UNK	If S/S, why?

**10. ESOP's (PLEASE ATTACH STATEMENTS)**

Name and Address of Account Provider	Amount in account/as of what date	Last 4 digits of acct #	Signors on account	C/P, S/S or UNK	If S/S, why?

**11. TRUSTS (PLEASE ATTACH TRUST DOCUMENTS)**

Name and Address of Trust	Amount in account/as of what date	Last 4 digits of acct #	Signors on account	C/P, S/S or UNK	If S/S, why?

**12. LIMITED PARTNERSHIPS (PLEASE ATTACH LTD PARTNERSHIP DOCUMENTS)**

Name and Address of Limited Partnership	Amount in account/as of what date	Last 4 digits of acct #	Signors on account	C/P, S/S or UNK	If S/S, why?

**13. OTHER (PLEASE ATTACH ANY ADDITIONAL DOCUMENTATION)**


Do you have a financial advisor, financial planner or brokerage house? Y/N \_\_\_\_\_ . If so, please provide the address and telephone number for such person or entity.

Name	Address	Telephone Number

**C. PERSONAL PROPERTY**

**1. MOTOR VEHICLES (ATTACH COPIES OF TITLES & BLUE BOOK VALUES)**

Year / Make / Model	Who drives the vehicle?	How is vehicle titled?	Lien Amount as of what date	Approx. Value	C/P, S/S or UNK

**2. OTHER VEHICLES (Airplanes, boats, trailers, campers, snowmobiles, motorbikes, etc.) (ATTACH COPIES OF TITLES AND BLUE BOOK VALUES)**

Year / Make / Model	Who drives the vehicle?	How is vehicle titled?	Lien Amount as of what date	Approx. Value	C/P, S/S or UNK

**3.** Is the division of furniture, appliances, artwork and household goods disputed? Y/N \_\_\_\_\_. If so, please make an inventory of all such items and indicate your opinion as to the fair market value. Please **ATTACH** an itemized list with your proposal for division.

Please also **ATTACH** a list of any items you consider your sole and separate property. Those items may include gifts, items received by inheritance, items you have collected such as stamps, guns, knick knacks, and/or anything you owned before your marriage.

**4. COLLECTIONS SUCH AS ART, GUNS, STAMPS, ANTIQUES, COINS, SPORTS MEMORABILIA, TOOLS, ETC.**

Item	Date Acquired	Source of Funds	Current Location	Approx. Value	C/P, S/S or UNK

**D. REAL PROPERTY**

For each parcel of real property, please provide the following information. If you have a suggested disposition or if the property is presented listed for sale, note that information. **(PLEASE ATTACH ANY AND ALL EXISTING DEEDS AND APPRAISALS, IF AVAILABLE.)**

Complete Property Address	Date acquired	How Title is held	Amount/Source of down payment	Lien / approx. balance / mortgage holder	Monthly payment	Value / date of last appraisal

**E. BUSINESS INTERESTS**

For each business you and/or your spouse have, list the name of the business, type of business, location, date established, percentage of ownership, shares of stock, and the like. **(PLEASE ATTACHED COPIES OF ALL BUSINESS TAX RETURNS FOR THE PAST TWO (2) YEARS.)**

Business name and address	Inception Date	Form of ownership (PC, S/C Corp., Sole Proprietorship, Partnership & % of ownership)	Business Function

**F. FUNDS OWED TO YOU**

Please answer all questions and provide copies of all underlying documentation, such as notes.

**1. Promissory Notes**

Date Loaned	To Whom	Amount Loaned	Terms of Repayment	Unpaid Balance as of what date

**2. Loans to Family**

Date Loaned	To Whom	Amount Loaned	Terms of Repayment	Unpaid Balance as of what date

**3. Loans to Business**

Date Loaned	To Whom	Amount Loaned	Terms of Repayment	Unpaid Balance as of what date

**4. Loans to Others**

Date Loaned	To Whom	Amount Loaned	Terms of Repayment	Unpaid Balance as of what date

**G. INSURANCE**

Please provide all information as to each type of insurance delineated hereinbelow. Kindly provide copies of all insurance face sheets or other information stating amount and type of coverage, beneficiaries, premiums, cash value, etc.

**1. Health, Medical, Accident and Hospitalization (PLEASE PROVIDE DOCUMENTATION SHOWING THE BREAKDOWN OF COST FOR ONLY YOU AND ONLY YOUR CHILDREN)**

Name of Company	Who is Covered	Cost of Coverage	COBRA Cost

**2. Dental and orthodontia**

Name of Company	Who is Covered	Cost of Coverage	COBRA Cost

**3. Life (PLEASE PROVIDE COPIES OF LIFE INSURANCE POLICIES)**

Name of Company	Who is Covered	Cost of Coverage	COBRA Cost

**4. Annuities**

Name of Company	Who is Covered	Cost of Coverage	COBRA Cost

**5. Trust / Wills / Living Wills**

Do you have a Trust? Y/N \_\_\_\_\_. Please complete the chart below. **(PLEASE PROVIDE A COPY OF THE TRUST)**

Date	Beneficiaries	Preparer's Name, Address and Phone Number

Do you have a Will? Y/N \_\_\_\_\_. Please complete the chart below. **(PLEASE PROVIDE A COPY OF THE WILL)**

Date	Executor(s)	Beneficiaries	Preparer's Name, Address and Phone Number	Name, Address and Phone Number of Persons who hold copies

Do you have a Living Will? Y/N \_\_\_\_\_. Please complete the chart below. **(PLEASE PROVIDE A COPY OF YOUR MOST RECENT LIVING WILL.)**

Date	Preparer's Name, Address and Phone Number	Name, Address and Phone Number of Persons who hold copies

**H. OTHER BENEFITS**

List all club memberships, airline travel benefits, frequent flyer miles, lottery winnings, personal injury claims, royalties, patents, copyrights, anticipated tax refunds, etc.

Type of Benefit	Amount / Value of Benefit

**II. LIABILITY INFORMATION**

**PLEASE OBTAIN A COPY OF A CREDIT REPORT FOR YOU AND YOUR SPOUSE.**

This may be done for free on the internet at [www.freecreditreports.com](http://www.freecreditreports.com) or in person at Credit Data Southwest (602) 252-6951 for a minimal fee.

Include all information known to you for you, your spouse, or both, and indicate your opinion of whether such liability is a community liability (“C/L”), your sole and separate liability (“S/S”) or unknown (“UNK”) if you are unsure. If you claim a liability is separate, please indicate why you believe it is separate. **(PLEASE PROVIDE COPIES OF STATEMENTS FOR EACH OBLIGATION FOR THE PAST 12 MONTHS).**

**A. CREDIT CARDS (PLEASE ATTACH STATEMENTS)**

Name of Creditor & last 4 digits of account #	Party Holding Acct	Approx. balance & as of date	Monthly payment	Specific Purpose of Debt	C/L, S/S or Unk, if S/S, why?

**B. BANK LOANS, CAR LOANS / LEASES, STUDENT LOANS, LINES OF CREDIT, PROMISSORY NOTES (PLEASE ATTACH STATEMENTS)**

Name of Creditor & last 4 digits of account #	Party Holding Acct	Approx. balance & as of date	Monthly payment	Specific Purpose of Debt	C/L, S/S or Unk, if S/S, why?

**C. MORTGAGES ON REAL ESTATE (PLEASE ATTACH COPIES OF MORTGAGE STATEMENTS)**

Name of Creditor & last 4 digits of account #	Party Holding Acct	Approx. balance & as of date	Monthly payment	Specific Purpose of Debt	C/L, S/S or Unk, if S/S, why?

**D. TAXES OWED**

Item	Amount	Nature of Liability	Taxing Agency

**E. OTHER DEBTS OR OBLIGATIONS (PLEASE ATTACH STATEMENTS)**

Name of Creditor & last 4 digits of account #	Party Holding Acct	Approx. balance & as of date	Monthly payment	Specific Purpose of Debt	C/L, S/S or Unk, if S/S, why?

**III. GIFTS INFORMATION**

Have you or your spouse given or received any gifts or transferred funds or property worth over \$500 in the past two years? Y/N \_\_\_\_\_. List every such gift or transaction and indicate who the donor and recipients were.

Donor	Recipient	Date of Gift	Amount of Gift

**IV. SUPPORT / INCOME**

**A. CURRENT EMPLOYMENT**

Please complete the following chart. If employed at this position less than one (1) years, please provide all information for previous employment.

Name and Address of Current Employer	Title or Position	Salary or Hourly Wage	Duration of Employment	Hours Worked

**B. EMPLOYMENT BENEFITS**

Please complete the following chart, listing all benefits.

Type of Benefit (i.e. car allowance, gas reimbursement, bonuses, commissions, sick leave, comp time, vacation benefits, unemployment compensation, etc.)	Dollar Value of Benefit, if any	Amount of benefit (i.e. hours of vacation/sick leave)

**C. SPOUSAL MAINTENANCE**

1. Indicate whether you believe either you or your spouse is entitled to spousal maintenance.

YES \_\_\_\_\_ NO \_\_\_\_\_. If yes, please fill out section IX below.

2. If you are **seeking** spousal maintenance, please provide the basis for such claim (including factual work history during the marriage, health concerns, educational concerns, etc.) If you are **defending** a claim for spousal maintenance, please provide your position regarding such claim by your spouse.

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**D. CHILD SUPPORT**

Please itemize monthly expenses for your child(ren) for the following:

1. Child care associated with your or your spouse's/partner's employment, including name and address of child care provider.

<b>Child Care Provider Name and Address</b>	<b>Child's Name</b>	<b>Amount of Child Care</b>

2. Health insurance premiums, including name and insurance carrier.

<b>Name of Insurance Carrier</b>	<b>Name of Individual Covered</b>	<b>Cost for that Individual</b>

3. Extraordinary medical expenses.

<b>Type of Extraordinary Medical Expense</b>	<b>Name of Child Requiring Expense</b>	<b>Cost for that Individual</b>

4. Extra education expenses, i.e. tutoring, private school, etc.

<b>Type of Extra Education Expense</b>	<b>Name of Child Requiring Expense</b>	<b>Cost for that Individual</b>

**V. CHILDREN**

**A. NAMES AND AGES**

List the names and dates of birth of all children common to you and your spouse / partner.

Name of Child	Date of Birth	Current Age of Child

**B. CUSTODY**

Do you anticipate that custody will be disputed? Y/N \_\_\_\_\_. If yes, please set forth your position as to custody and your reasons why. If no, please set forth your understanding of the custody plan.

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**VI. WITNESSES**

Please provide the name and address of each witness who might have relevant information on any of the issues covered by any of the above categories. For each witness, identify their name, address and telephone number, as well as the issue such witness may address with a summary of his/her testimony.

Name, Address and Telephone Number of Each Witness	Identify the Issue the witness may address and a summary of his/her testimony

**VII. ATTORNEY FEES**

How much have you paid in attorney's fees and costs since the inception of this action?  
\$ \_\_\_\_\_

What was the source of funds, i.e. community funds, income, sole and separate funds, loan, etc.? \_\_\_\_\_.

If you answered loan, who was the lender? \_\_\_\_\_.  
Did you sign a promissory note? Y/N \_\_\_\_\_.

Has your spouse paid any of your attorney's fees and costs? Y/N \_\_\_\_\_.  
If yes, was such payment by Court Order or voluntary? \_\_\_\_\_.

Have you paid any of your spouse's attorney's fees and costs? Y/N \_\_\_\_\_.  
If yes, was such payment by Court Order or voluntary? \_\_\_\_\_.

**VIII. OTHER ISSUES**

1. Have you been married before? Y/N \_\_\_\_\_.  
Date of divorce: \_\_\_\_\_ Or date widowed: \_\_\_\_\_.  
If yes, please provide details: \_\_\_\_\_.

2. Has your spouse/partner been married before? Y/N \_\_\_\_\_.  
Date of divorce: \_\_\_\_\_ Or date widowed: \_\_\_\_\_.  
If yes, please provide details: \_\_\_\_\_.

3. Do you have any support obligation relating to any former marriage or other relationship? Y/N \_\_\_\_\_.  
If yes, please provide details: \_\_\_\_\_.

4. Do you have any support entitlement relating to any former marriage or other relationship? Y/N \_\_\_\_\_.  
If yes, please provide details: \_\_\_\_\_.

5. Do you use alcohol and/or drugs? Y/N \_\_\_\_\_.  
If yes, please provide details: \_\_\_\_\_.

6. Does your spouse/partner use alcohol and/or drugs? Y/N \_\_\_\_\_.

If yes, please provide details: \_\_\_\_\_.

7. Is there a history of domestic violence in this marriage/relationship? Y/N \_\_\_\_\_.

If yes, please provide details: \_\_\_\_\_.

8. Does your spouse/partner have a history of mental health problems? Y/N \_\_\_\_\_.

If yes, please provide details: \_\_\_\_\_.

9. Do you have any significant medical problems? Y/N \_\_\_\_\_.

If yes, please provide details: \_\_\_\_\_.

10. Does your spouse/partner have any significant medical problems? Y/N \_\_\_\_\_.

If yes, please provide details: \_\_\_\_\_.

11. Do any of your children have any significant medical problems? Y/N \_\_\_\_\_.

If yes, please provide details: \_\_\_\_\_.

12. Did you help pay for your spouse's education? Y/N \_\_\_\_\_.

If yes, please provide details: \_\_\_\_\_.

13. Did your spouse help pay for your education? Y/N \_\_\_\_\_.

If yes, please provide details: \_\_\_\_\_.

14. Are you or your spouse or a parent of any child not common to this marriage/relationship now receiving or have you received within the last 3 years, any public assistance such as AFDC, SSI or food stamps? Y/N \_\_\_\_\_.

If yes, please provide details: \_\_\_\_\_.

15. Do you believe there are any other issues in this case which have not been covered by any of the above categories? Y/N \_\_\_\_\_.

If so, explain: \_\_\_\_\_.

**IX. ADDITIONAL QUESTIONS**

1. Has either spouse had any plastic surgery or other personal procedures performed within the past 12 months? Y/N \_\_\_\_\_.

If yes, please provide details: \_\_\_\_\_.

2. Has either spouse committed community property waste by wasting assets on gambling or incurring gambling debts? Y/N \_\_\_\_\_.

If yes, please provide details: \_\_\_\_\_.

3. Has either spouse committed community waste by wasting assets on another person such as in an extra-marital affair? Y/N \_\_\_\_\_.

If yes, please provide details: \_\_\_\_\_.

4. Has either spouse expended a considerable sum of money within the past 12 months that would be out of the ordinary? Y/N \_\_\_\_\_.

If yes, please provide details: \_\_\_\_\_.

CLIENT'S SIGNATURE: \_\_\_\_\_ DATE: \_\_\_\_\_

# LEGISLATIVE AND RULE CHANGES

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Erica Leavitt and David  
Horowitz

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## Changes Regarding the Child Support Guidelines

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## CHILD SUPPORT GUIDELINES

- Effective Date. Guidelines will be in effect as of 1/1/2022.
- The Formula. Basic child support obligation charts calculates the combined gross income of the parties for average people with average children; then the next factors implement certain expenses for the particular family and the particular children; then divides the percentage of responsibility to each individual parent.
- Gross Income is called “child support income” – the guidelines include any source before any deductions or withholding.

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## CHILD SUPPORT GUIDELINES

- Attribution. Look at Section 4 of income for “attributing” income – this section gives explicit explanations of when income should or should not be attributed. When you are attributing income, and it’s higher than minimum wage –you don’t have to attribute 40 hours at that rate if it’s higher than minimum wage.
- Tax affecting spousal maintenance. The new guidelines include specific language that gives the Court discretion to account for the tax impact of spousal maintenance.
- New Economic Data. The basic child support amount is now really driven by economic data / how spending occurs / and that the numbers support going to \$30,000/month cap for the combined income – now there is more instruction on making requests to deviate higher than the basic child support tables provide for – See Section IX.

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- Self Support Reserve. The new guidelines have simplified the self support reserve and made it flexible to account for minimum wage changes.
- Deviation. If the parents come to a compromise on any specific factor in the worksheet, that is not considered a “deviation”. Further the burden is on the parent requesting the deviation to establish that it is appropriate under the facts of the case.
- Medical Insurance. Medical insurance to be credited on the worksheet. If insurance is available to both parents, the court will assign that responsibility to the parent that has a greater amount of parenting time, absent an agreement otherwise. If insurance is provided by a stepparent, the parent will get credit for that in the worksheet.

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- Childcare expenses – The new guidelines provide clarification for third-party caregivers that are family members who can be claimed as a dependent.
- Parenting time adjustments. Parenting time credit table has been modified such that there is only one table. Furthermore, the maximum number of days that has been accounted for is 164 days. This means that if a parent has 164 days of parenting time, the court will treat the schedule as equal time for child support purposes. Moving forward, the most common parenting time plans are going to fall within a specific range.
- Denial of tax benefit. If a parent requests that a tax benefit be denied because the other party has not paid their child support obligation, the burden is on that parent to establish the denial is appropriate.

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# Changes Regarding Orders of Protection

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On April 22, 2022, Governor Ducey signed into law HB2604:

“H.B. 2604 increases the effective duration of an order of protection or a modified order of protection from one year to two years after the defendant has been served and extends the effective duration of an emergency order of protection to seven calendar days after issuance.

“By doubling the duration of an order of protection, victims can feel safe and secure for longer without the burdens of a judicial process,” said Rep. Bolick. “H.B. 2604 is common sense to improve the safety of survivors and protect them from revictimization. My thanks to Governor Ducey for signing this critical legislation.”

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This bill further removes barriers for victims to be granted an emergency order by specifying that, in counties with a population of fewer than 150,000 persons, any judge, justice of the peace, magistrate or commissioner may issue an order by telephone during the hours that the courts are closed.”

<https://azgovernor.gov/governor/news/2022/04/governor-ducey-signs-bi-partisan-legislation-protecting-victims-rights>

<https://www.azleg.gov/legtext/55leg/2R/laws/0167.pdf>

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A new section was added to Rule 38 of the Arizona Rules of Protective Order Procedure. Until now, someone challenging an order of protection knew what alleged events would be presented at the hearing. Now, a plaintiff (domestic violence victim) can present evidence about relevant allegations that were not included in the original petition.

If a plaintiff wants to do so, the court must allow her to amend her petition during the hearing. If she does so, then the defendant has three options: (1) request a brief recess to prepare a defense to the new charges; (2) continue the hearing and come back on a different date at a different time; or (3) press forward with the hearing as scheduled.

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Due process generally requires adequate notice and a meaningful opportunity to be heard. In most court proceedings, additional allegations cannot be added either in the middle of a hearing or during an actual trial.

These changes clearly are designed to make it easier for domestic violence victims to present information to courts. In fact, the changes were requested by the Domestic Violence Law Clinic at the University of Arizona's law school. The Committee on the Impact of Domestic Violence and the courts also supported the new rules.

[https://www.thefoothillsfocus.com/news/new-rules-for-orders-of-protection-hearings/article\\_b99aec86-7eee-11ec-9bbd-4fe9ab48d473.html](https://www.thefoothillsfocus.com/news/new-rules-for-orders-of-protection-hearings/article_b99aec86-7eee-11ec-9bbd-4fe9ab48d473.html)

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## Changes Regarding Spousal Maintenance

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## Spousal Maintenance

- SB1383 has passed & was signed into law by Governor Ducey on June 14, 2022.

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SB1383 includes the following direction to the Supreme Court regarding Spousal Maintenance Guidelines:

B. The Supreme Court shall establish guidelines for determining and awarding spousal maintenance. The Court may award spousal maintenance pursuant to the guidelines only for a period of time and in an amount necessary to enable the receiving spouse to become self-sufficient. The amount of spousal maintenance resulting from the application of the guidelines shall be the amount of spousal maintenance ordered by the court, unless the court finds in writing that applying the guidelines would be inappropriate or unjust. The Supreme Court shall base the guidelines and criteria for deviation from the guidelines on the following relevant factors listed in paragraphs 1 through 13 of this subsection and considered together and weighed in conjunction with each other:

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S.B. 1383 also includes the following changes:

- Establishes a statutory mechanism for couples who have a decree of legal separation and want to reunite to legally re-establish their marital community (A.R.S. § 25-313 -new subsection C);
- Establishes a joint consent decree filing for dissolution (new A.R.S. § 25-314.01). This is the same program piloted in Maricopa County and will now be statewide with a reduced total filing fee. It is intended for parties who reach complete agreements before either party has petitioned for divorce.

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- Bifurcates what has been A.R.S. § 25-315 (Preliminary Injunctions and temporary orders) into two separate statutes, with temporary orders now having its own statute (A.R.S. § 25-316).
- Reorganizes the entitlement portion of the spousal maintenance statute (A.R.S. 25-319A) in a fashion that links like provisions together.
- Makes language improvements, technical & clean up changes to improve readability & clarity.

<https://www.azleg.gov/legtext/55leg/2R/laws/0301.pdf>

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# ARIZONA'S NEW CHILD SUPPORT GUIDELINES

Effective January 1, 2022

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## HIGHLIGHTS

- Executive Summary
- Reorganization
- Restyling
- Child Support Income and Adjustments
- Updating and Expansion of Tables
- Basic Support Obligation and Adjustments
- Parenting Time Adjustment
- Deviations
- Tax Benefits
- The New Statewide Worksheet



*"Are these just guidelines, or are they actual new policies?"*

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# The Executive Summary

## Step 1: Child Support Income of Each Parent

Each parent's Child Support Income is inserted into the corresponding fields in the computer-based Child Support Worksheet. When deciding the amount of income to assign to a parent, Section II.A of the Guidelines provides comprehensive assistance.

## Step 2: Adjustments to Child Support Income

Once Child Support Income is established, that amount may need to be adjusted because of other circumstances. Section II.B of the Guidelines details those adjustments and when those adjustments are appropriate.

## Step 3: Determining the Basic Child Support Obligation

The total of both parents' Adjusted Child Support Income is the Combined Adjusted Child Support Income. The Combined Adjusted Child Support Income will be used to determine the Basic Child Support Obligation using the Schedule of Basic Support Obligation. The computer-based Child

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Support Worksheet will insert this amount upon entry of Combined Adjusted Child Support Income. Further information can be found in Sections II.C and III.A of the Guidelines.

## Step 4: Adjustments to the Basic Child Support Obligation

The Basic Child Support Obligation is not the total amount the court will use to determine the Final Child Support Obligation. The court also factors in additional child-related costs, such as medical insurance premiums, childcare costs, and other expenses. Section III.B of the Guidelines sets forth the nature of these costs and the method for determining the amount to be added to the calculation on the computer-based Child Support Worksheet. These additional amounts are the Adjustments to the Basic Child Support Obligation.

## Step 5: The Combined Adjusted Child Support Obligation

The computer-based Child Support Worksheet will calculate the Combined Child Support Obligation by adding the Adjustments to the Basic Child Support Obligation. This total represents the total amount of costs that the court must consider for a child support determination. Further information can be found in Section III.B of the Guidelines.

## Step 6: The Allocation of the Combined Child Support Obligation

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## Reorganization

The historic  
"sausage making"  
of Guidelines



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# Correlation Table

Child Support Guidelines Correlation Table 2022 Revisions	
Section - 2018 Version	Section - 2022 Version
1	I(B)
2	I(C)
3	1(D) and I(E)
4	XII
5	II(A)
6	II(B)
7	II(C)
8	III(A)
9	III(B)
10	IV(A)
11	IV(B)
12	IV(C)
13	IV(E)
14	VII
15	V
16	IV(D)
17	X
18	IX(A)
19	IX(B)
20	VI
21	IX(C)
22	VII(D)
23	VII(E)
24	XI
25	XI(D)
26	II.A.2 and VII(B)
27	VIII
28	XIII
29	XIV

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# Restyling

New Terms

Questions

Enhanced Exampled



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## Determining Child Support Income

### Child Support Income- Section II(A)

- New term of art replacing “gross income”
- Clarification of what is and is not income
- Additional details regarding attribution of income



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## Adjustments to Child Support Income

### Adjustments to Child Support Income- Section II(B)

- Only deduct for spousal maintenance from “this marriage.”
- The non-tax impact of spousal maintenance
- Comprehensive provisions relating to “other children.”

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Schedule of Basic Support Obligations						
Combined Adjusted Gross Income	One Child	Two Children	Three Children	Four Children	Five Children	Six Children
28550	2488	3766	4528	5058	5563	6047
28600	2491	3771	4535	5065	5572	6056
28650	2494	3776	4541	5073	5580	6065
28700	2497	3781	4548	5080	5588	6074
28750	2500	3786	4555	5088	5597	6083
28800	2503	3791	4562	5095	5605	6092
28850	2506	3796	4568	5103	5613	6101
28900	2508	3801	4575	5110	5621	6110
28950	2511	3806	4582	5118	5630	6119
29000	2514	3811	4588	5125	5638	6128
29050	2517	3816	4595	5133	5646	6137
29100	2520	3821	4602	5140	5654	6146
29150	2523	3826	4609	5148	5663	6155
29200	2526	3831	4615	5155	5671	6164
29250	2529	3836	4622	5163	5679	6173
29300	2532	3841	4629	5170	5688	6182
29350	2535	3846	4636	5178	5696	6191
29400	2538	3851	4642	5186	5704	6200
29450	2540	3856	4649	5193	5712	6209
29500	2543	3861	4656	5201	5721	6218
29550	2546	3866	4663	5208	5729	6227
29600	2549	3871	4669	5216	5737	6236
29650	2552	3876	4676	5223	5745	6245
29700	2555	3881	4683	5231	5754	6254
29750	2558	3886	4690	5238	5762	6263
29800	2561	3891	4696	5246	5770	6272
29850	2564	3896	4703	5253	5779	6281
29900	2567	3901	4710	5261	5787	6290
29950	2569	3906	4716	5268	5795	6299
30000	2572	3911	4723	5276	5803	6308

## Basic Child Support Obligation

### Update and Expansion of Tables

- Schedule updated based upon current economic data
- Combined Income up to \$30,000 per month
- Burden of Proof over \$30,000 per month

9

## Adjustments to Basic Support Obligation



### Section III(B)

- Mandatory Older Child Adjustment
- Medical insurance provided by step-parent
- Child Care Expenses
- Annualized Expense Example

10

# Parenting Time Adjustment

- Amend Table to Provide Sequential Adjustments every 10 to 15 days
- Elimination of Table B
- Equal Parenting Time Begins at 164 days
- Equal Parenting Time Adjustment Calculation

PARENTING TIME TABLE	
Number of Parenting Time Days	Adjustment Percentage
0–19	0
20–34	.025
35–49	.050
50–69	.075
70–84	.10
85–99	.15
100–114	.175
115–129	.20
130–142	.25
143–152	.325
153–163	.40
164 or more	.50

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## SECTION IX. DEVIATIONS

D. Circumstances that may warrant a deviation include, but are not limited to, cases in which:

1. A significant disparity of income exists between the parents and each parent has significant parenting time;
2. The combined income exceeds \$30,000 monthly and there is a significant disparity in income between the parents;
3. One parent is paying a disproportionate share of the child's expenses and there is significant parenting time for each parent;
4. The parenting plan will require a parent to incur significant travel expenses related to parenting time and the cost thereof in combination with child support may impede the parent's ability to exercise parenting time;
5. The payment of child support would compromise the parent's ability to receive and afford out-of-pocket necessary and extraordinary health care or mental health services; or
6. Unusual emotional or physical needs of a natural or adopted child not common to the parties if that child requires that parent's presence in the home.

E. It is not a deviation to:

1. Round off the monthly child support amount for ease of accounting;
2. Compromise on any individual figure incorporated in the Guidelines' calculation (such as a parenting time adjustment or a parent's Child Support Income);
3. Reduce the Child Support Order based on the Self-Support Reserve Test in Section VIII above; or
4. Order zero child support if the monthly child support amount would be less than the monthly Support Clearinghouse Fee in Section X.A.5 below.

# Deviations

Better guidance as to what may or may not be a basis for deviating from the Guideline amount

12

## Section IX: TAXES

- \* Allocation of tax benefits
- \* Elimination of self-help
- \* New Procedure

- Section XI(C)(4) - Procedure Time Lines if Tax Benefits Are Conditioned
- January 20 - Parties must communicate regarding the benefits
- January 31 - If no agreement, Party claiming conditions have not been met and wanting to claim benefits, must provide detailed written notice of intent to claim benefits and reasons conditions have not been met
- 20 Days After Receipt of Notice - Party entitled to claim benefits files Petition for Enforcement
- Petition Must Include Facts in Dispute and Request for Hearing

13

## CHILD SUPPORT ORDER

### EXAMPLES

- POSITIVE SUPPORT
- NEGATIVE SUPPORT
- EQUAL PARENTING TIME

### COURT FINDINGS

- WORKSHEET ALLOWS SPECIFIC FINDINGS



" I lead by example as long as I'm not held legally liable. "

14



# New and Improved Worksheet

“We added the words ‘New and Improved’ to the package design. That’s the part that’s new and improved.”

15

Link to 2022 Guidelines:

<https://www.azcourts.gov/Portals/31/AOCDRS10H2022.pdf?ver=2021-10-01-123004-923>

Link to Child Support Worksheet:

<https://superiorcourt.maricopa.gov/lrc/child-support-calculator/>

Link to Family Court Improvement Committee and Subcommittee’s Final Report and Recommendations:

<https://www.azcourts.gov/Portals/31/2021ReportFCICCSGRS.pdf?ver=2021-04-14-192637-967>

Link to Center for Policy Research (Dr. Venohr) Review of Guidelines and Findings from Analysis of Case File Data:

<https://www.azcourts.gov/Portals/31/2021AZEconomicandCaseFileReviewFCICCGRS.pdf?ver=2021-04-14-192639-973>



“I bought an air filter for my desk. It removes dust, odors, pollution, complaints and criticism.”

16

# **OVERVUE OF DISCOVERING ASSETS AND INCOME**

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STATE BAR OF ARIZONA  
2022 CLE BY THE SEA  
FAMILY LAW PROGRAM

JULY 7<sup>TH</sup> – JULY 10<sup>TH</sup>, 2022

1

**WHAT AM I LOOKING FOR?**

**WHERE DO I START?**

**WHAT DO I DO NEXT?**

2

## **WHAT AM I LOOKING FOR? SHOW ME THE MONEY**

- 1. INCOME**
- 2. EXPENSES**
- 3. ASSETS**
- 4. LIABILITIES**

3

## **WHERE DO I START? LIFESTYLE ANALYSIS**

- 1. PREPARE A FINANCIAL DISCLOSURE, INCLUDING A MARITAL BALANCE SHEET**
- 2. DETERMINE INCOME OF PARTIES**
- 3. DETERMINE STANDARD OF LIVING**
- 4. COMPARE BALANCE SHEETS FROM TIME TO TIME TO EVALUATE CHANGES IN ASSETS AND/OR LIABILITIES**
- 5. TRACE AND FIND FUNDS OR OTHER ASSETS**

4

# WHAT DO I DO NEXT?

## DISCOVERY

1. PRODUCTION OF DOCUMENTS
2. DEPOSITIONS
3. EXPERTS
  - A. CERTIFIED PUBLIC ACCOUNTANTS
  - B. FORENSIC ACCOUNTANTS
  - C. BOOKKEEPERS
  - D. INVESTMENT ADVISORS/FINANCIAL PLANNERS
  - E. BUSINESS VALUATORS
  - F. APPRAISERS

5

## VERTICAL AND HORIZONTAL ANALYSIS

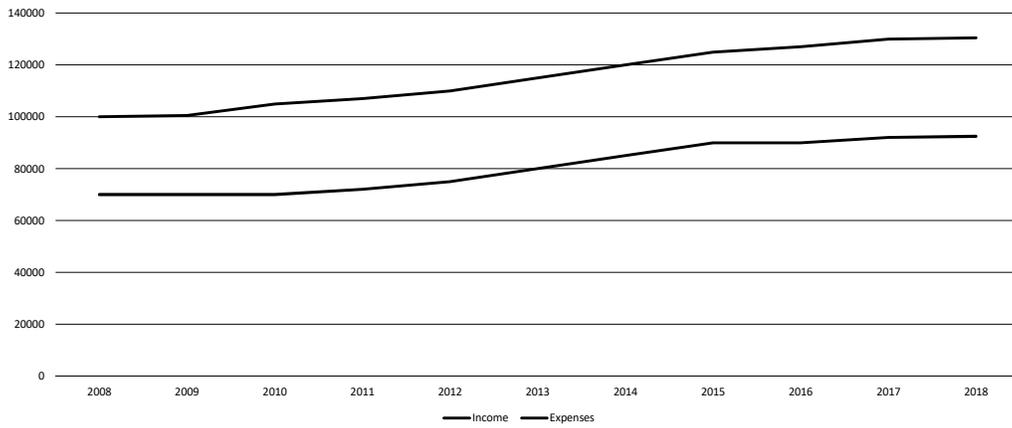
VERTICAL: INCOME AND EXPENSES ON A MONTHLY BASIS

HORIZONTAL: COMPARE OVER MULTIPLE PERIODS OF  
TIME

6

# VERTICAL AND HORIZONTAL ANALYSIS

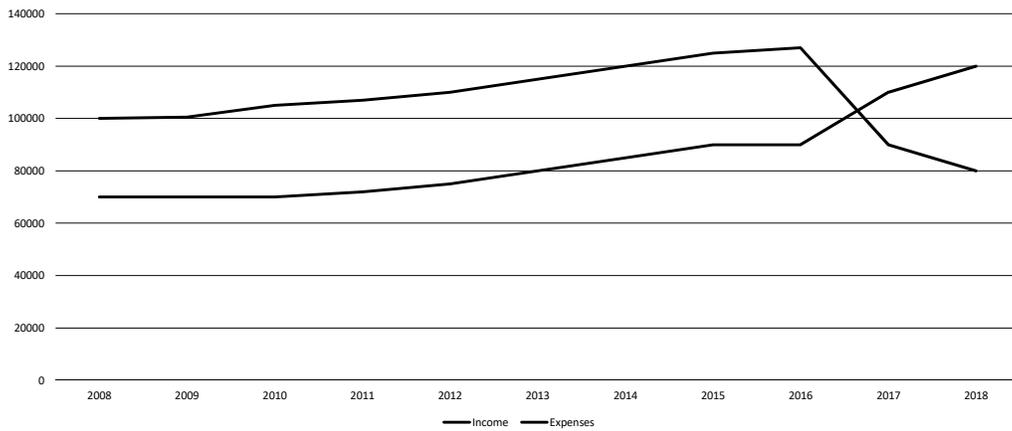
Chart Title



7

# VERTICAL AND HORIZONTAL ANALYSIS

Chart Title



8

## METHODS TO HIDE INCOME

- UNDERREPORT INCOME ON TAX RETURNS
- WITHHOLD PAY AND BENEFITS
- GET PAID IN CASH
- RECEIVE PERKS AND BENEFITS
- INCOME DISGUISED AS EXPENSES
- UNDISTRIBUTED INCOME
- BARTER
- FAIL TO DISCLOSE BUSINESS VENTURE
- RUN INCOME THROUGH HIDDEN ENTITY
- USE OFFSHORE ACCOUNTS

9

## WAYS TO HIDE ASSETS

- HIDE CASH
- USE CASH TO PURCHASE ASSETS
- OPEN SECRET ACCOUNTS
- PURCHASE OVERLOOKED OR UNDERVALUED ITEMS
- UNDERVALUE ASSETS
- OVERPAY CREDITORS
- PAY DOWN LOANS SECURED WITH ASSETS
- ESTABLISH ACCOUNTS IN NAMES OF OTHERS
- TRANSFER ASSETS
- SHAM TRANSACTIONS

10

# FINANCIAL DISCOVERY CHECKLIST

- ALL PERSONAL BALANCE SHEETS AND FINANCIAL STATEMENTS FOR THE LAST \_\_\_\_\_ YEARS.
- PERSONAL INCOME TAX RETURNS (FORM 1040) FOR THE LAST \_\_\_\_\_ YEARS, INCLUDING ANY AMENDED RETURNS.
- W-2 AND/OR PAY STUBS FOR ALL YEARS FOR WHICH PERSONAL INCOME TAX RETURNS HAVE NOT YET BEEN COMPLETED OR FILED.
- COPIES OF PERSONAL FINANCIAL STATEMENTS PREPARED FOR ANY PURPOSE IN THE LAST \_\_\_\_\_ YEARS.
- LIST OF ALL BANK ACCOUNTS IN THE PARTY'S NAME OR TO WHICH THE PARTY HAS ACCESS, INCLUDING THE BANK NAME, BANK LOCATION, ACCOUNT NUMBER AND TYPE OF ACCOUNT.

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# FINANCIAL DISCOVERY CHECKLIST

- LIST OF ALL BANK ACCOUNTS IN THE PARTY'S NAME OR TO WHICH THE PARTY HAS ACCESS THAT HAVE BEEN CLOSED WITHIN THE LAST \_\_\_\_\_ YEARS, INCLUDING THE BANK NAME, LOCATION, ACCOUNT NUMBER, AND TYPE OF ACCOUNT.
- LIST OF ALL CREDIT CARDS, FULL ACCOUNT NUMBERS, AND CURRENT BALANCES FOR ANY CARD IN THE PARTY'S NAME, OR WITH WHICH THE PARTY HAS CHARGING AUTHORITY. (*THIS INCLUDES CREDIT CARDS THAT THE PARTY USES BUT THAT ARE PAID BY A BUSINESS OR OTHER ENTITY*)
- DETAILED LIST OF ANY INVESTMENTS, OWNERSHIPS, OR OTHER INTERESTS IN BROKERAGE ACCOUNTS, TREASURY BILLS, BONDS, STOCKS, STOCK OPTIONS, STOCK WARRANTS, BONDS, DEBENTURES, GUARANTEED INVESTMENT CERTIFICATES, ANNUITIES, TERM DEPOSITS, BANKERS' ACCEPTANCES, LIMITED PARTNERSHIPS, COMMERCIAL PARTNERSHIPS, JOINT VENTURES, PENSION PLANS, 401(K) PLANS, INDIVIDUAL RETIREMENT ACCOUNTS, EMPLOYEE STOCK OPTION PLANS (ESOPs), PROFIT-SHARING PLANS, PUT OPTIONS, CALL OPTIONS, TAX SHELTERS, AND ANY OTHER INVESTMENTS OF ANY NATURE, WHETHER HELD DIRECTLY, INDIRECTLY, OR IN ANY OTHER MANNER WHATSOEVER.

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## **FINANCIAL DISCOVERY CHECKLIST**

- COPIES OF ALL APPLICATIONS FOR CREDIT MADE WITH BANKS, MORTGAGE BROKERS, OR ANY OTHER FINANCIAL INSTITUTION IN THE PRECEDING \_\_\_\_\_ YEARS.
- LIST OF ANY DEPOSITS HELD IN ESCROW FOR OR BY THE PARTY.
- LIST OF ALL SAFETY DEPOSIT BOXES IN THE PARTY'S NAME AND NAMES OF THE PARTY'S NOMINEES, INCLUDING THE LOCATION OF EACH BOX, A LIST OF THE CONTENTS, ALL THE PEOPLE WITH ACCESS TO EACH BOX, AND A SCHEDULE OF ALL VISITS TO THE BOXES IN THE PROCEEDING \_\_\_\_\_ YEARS.
- COPIES OF ALL LIFE INSURANCE POLICIES.
- COPIES OF ALL WILLS AND TRUSTS UNDER WHICH THE PARTY IS A CAPITAL BENEFICIARY OR INCOME BENEFICIARY.
- LIST OF ALL VEHICLES OWNED OR LEASED BY THE PARTY OR FOR THE PARTY'S PERSONAL USE, INCLUDING AUTOMOBILES, BOATS, SNOWMOBILES, PERSONAL WATERCRAFT, MOTORCYCLES, AND AIRCRAFT.

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## **FINANCIAL DISCOVERY CHECKLIST**

- LIST OF REAL ESTATE INTERESTS OWNED BY THE PARTY DIRECTLY, INDIRECTLY, OR IN ANY MANNER WHATSOEVER.
- DETAILS OF ALTERATIONS, IMPROVEMENTS, OR RENOVATIONS IN EXCESS OF \$5,000 MADE TO THE PARTY'S RESIDENCE IN THE PRECEDING \_\_\_\_\_ YEARS.
- SCHEDULE OF ALL GIFTS OR TRANSFERS IN EXCESS OF \$2,500 MADE BY THE PARTY TO ANY INDIVIDUAL OR BUSINESS ENTITY IN THE PRECEDING \_\_\_\_\_ YEARS, INCLUDING THE RECIPIENT, THE NATURE OF THE GIFT, THE GIFT'S VALUE, THE DATE OF THE TRANSFER, THE RELATIONSHIP TO THE RECIPIENT, AND ANY DOCUMENTATION RELATED TO THE GIFT.
- LIST ALL SOURCES OF REMUNERATION, INCLUDING SALARIES, BONUSES, STOCK OPTIONS, EXPENSE ALLOWANCES, AUTO ALLOWANCES, CLUB MEMBERSHIPS, ENTERTAINMENT, SPORTS EVENTS, OR ANY OTHER COMPENSATION.

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## FINANCIAL DISCOVERY CHECKLIST

- LIST OF ALL PERSONS TO WHOM THE PARTY HAS GIVEN POWER OF ATTORNEY DURING THE PRECEDING \_\_\_\_\_ YEARS.
- LIST OF ALL TRUSTS ESTABLISHED BY THE PARTY DURING THE PRECEDING \_\_\_\_\_ YEARS, INCLUDING THE NAMES OF ALL PRINCIPAL AND INCOME BENEFICIARIES.

**IF SUPPORTING DOCUMENTATION FOR ASSETS IS DEEMED NECESSARY, REQUEST:**

- COPIES OF ALL INSURANCE POLICIES COVERING REAL ESTATE, VEHICLES, BOATS, PERSONAL EFFECTS, AND ANY OTHER ASSETS.
- COPIES OF ALL TAX ASSESSMENTS OF REAL ESTATE OWNED.

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## FINANCIAL DISCOVERY CHECKLIST

**IF A DETAILED ANALYSIS OF SPENDING IS DEEMED NECESSARY, REQUEST:**

- COPIES OF ALL BANK STATEMENTS, CHECKS, DEPOSIT SLIPS, AND WIRE TRANSFERS FOR THE LAST \_\_\_\_\_ OR \_\_\_\_\_ YEARS FOR ANY BANK ACCOUNTS TO WHICH THE PARTY HAS ACCESS.
- COPIES OF ALL CREDIT CARD STATEMENTS FOR THE LAST \_\_\_\_\_ OR \_\_\_\_\_ YEARS FOR ANY CREDIT CARD IN THE PARTY'S NAME OR WITH WHICH THE PARTY HAS CHARGING AUTHORITY.
- COPIES OF ALL BROKERAGE ACCOUNT STATEMENTS FOR THE LAST \_\_\_\_\_ OR \_\_\_\_\_ YEARS FOR ANY BROKERAGE ACCOUNTS TO WHICH THE PARTY HAS ACCESS.

**DOCUMENTS TO REQUEST IF THERE HAVE BEEN ANY AUDITS OR OTHER TAX ISSUES FOLLOW:**

- ANY NOTICES OF ASSESSMENT OR OTHER CORRESPONDENCE ABOUT EXAMINATIONS, ADDITIONAL LIABILITIES, OR OTHER DISPUTES WITH TAXING AUTHORITIES IN THE LAST \_\_\_\_\_ YEARS.

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## FINANCIAL DOCUMENTS NEEDED FROM CLIENTS

- 1. Bank Statements:** Copies of all monthly or periodic bank; checking; savings; brokerage; investment; and security account statements in which any party has or had an interest for the period commencing twelve (12) months prior to the service of the summons and complaint through the date of the disclosure.
- 2. Debt Statements:** Copies of credit card statements and debt statements for all parties for all months for the period commencing twelve (12) months prior to the service of the summons and complaint through the date of the disclosure.
- 3. Real Property:** Copies of all deeds, deeds of trust, purchase agreements, escrow documents, settlement sheets, and all other documents that disclose the ownership, legal description, purchase price and encumbrances of all real property owned by any party.
- 4. Property Debts:** Copies of all monthly or periodic statements and documents showing the balances owing on all mortgages, notes, liens, and encumbrances outstanding against all real property and personal property in which the party has or had an interest for the period commencing twelve (12) months prior to the service of the summons and complaint through the date of the disclosure; or if no monthly or quarterly statements are available during this time period, the most recent statements or documents that disclose the information.
- 5. Loan Application:** Copies of all loan applications which a party has signed within twelve (12) months prior to the service of the summons and complaint through the date of the disclosure.
- 6. Promissory Notes:** Copies of all promissory notes under which a party either owes money or is entitled to receive money.
- 7. Deposits:** Copies of all documents evidencing money held in escrow or by individuals or entities for the benefit of either party.
- 8. Receivables:** Copies of all documents evidencing loans or monies due to either party from individuals or entities.
- 9. Retirement/Other Assets:** Copies of all monthly or periodic statements and documents showing the value of all pension, retirement, stock option, and annuity balances, including Individual Retirement Accounts, 401(k) accounts, and all other retirement and employee benefits and accounts in which any party has or had an interest for the period commencing twelve (12) months prior to the service of the summons and complaint through the date of the disclosure; or if no monthly or quarterly statements are available during this time period, the most recent statements or documents that disclose the information.

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**10. Insurance:** Copies of all monthly or periodic statements and documents showing the cash surrender value, face value, and premiums charged for all life insurance policies in which any party has an interest for the period commencing twelve (12) months prior to the service of the summons and complaint through the date of the disclosure; or if no monthly or quarterly statements are available during this time period, the most recent statements or documents that disclose the information.

**11. Insurance Policies:** Copies of all policy statements and evidence of costs of premiums for health and life insurance policies covering either party or any child of the relationship.

**12. Values:** Copies of all documents that may assist in identifying or valuing any item of real or personal property in which any party has or had an interest for the period commencing twelve (12) months prior to the service of the summons and complaint through the date of the disclosure, including any documents that the party may rely upon in placing a value on any item of real or personal property (i.e., appraisals, estimates, or official value guides).

**13. Tax Returns:** Copies of all personal and business tax returns, balance sheets, profit and loss statements, and all documents that may assist in identifying or valuing any business or business interest for the last five (5) completed calendar or fiscal years with respect to any business or entity in which any party has or had an interest within the past twelve (12) months.

**14. Income:** Proof of income of the party from all sources, specifically including W-2 forms, 1099 forms, and K-1 forms, for the past two (2) completed calendar years, and year-to-date income information (pay check stubs, etc.) for the period commencing twelve (12) months prior to the service of the summons and complaint through the date of the disclosure.

**15. Personalty:** A list of all items of personal property with an individual value exceeding \$200, including, but not limited to, household furniture, furnishings, antiques, artwork, vehicles, jewelry, coins, stamp collections, and similar items in which any party has an interest, together with the party's estimate of current fair market value (not replacement value) for each item.

**15. Communications:** Any and all text messages, videos, emails, etc. (include corresponding date).

## **Financial Statements for Business Valuation**

- 1.** Please produce a copy of the business' electronic financial data (i.e. QuickBooks data file).
- 2.** Please produce a copy of balance sheets, income statements, statements of changes in financial position or statement of cash flows, and statements of stockholders' equity or partners' capital accounts for up to the last five fiscal years, if available.
- 3.** Please produce a copy of all income tax returns for up to the last five fiscal years, if available.
- 4.** Please produce a copy of the latest interim statements if the valuation date is three months or more beyond end of last fiscal year and interim statement for the comparable period the year before.
- 5.** Please produce a copy of the detailed general ledgers for up to the last five fiscal years.
- 6.** Please list all subsidiaries and/or financial interests in other companies with full name, any "doing business as" names, principal place of business, and contact information for the resident agent.

### **Other Financial Data**

- 7.** Please produce a copy of the equipment list and depreciation schedule.
- 8.** Please produce a copy of the aged accounts receivable list.
- 9.** Please produce a copy of the aged accounts payable list.
- 10.** Please produce a copy of the List of prepaid expenses
- 11.** Please produce a copy of the inventory list, with any necessary information on inventory accounting policies (including work in process, if applicable).
- 12.** Please produce a copy of the lease or leases. If the lease does not exist or is nontransferable, please state what new lease or rental terms will be.
- 13.** Please produce a copy of the any other existing contracts, for example employment agreements, covenants not to compete, supplier and franchise agreements,

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customer agreements, royalty agreements, equipment lease or rental contracts, loan agreements, labor contracts, employee benefit plans, etc.

14. Please produce any documents evidencing a list of stockholders or partners, with numbers of shares owned by each or percentage of each partner's interest in earnings and capital.
15. Please produce a copy of the compensation schedule for owners, including all benefits and personal expenses.
16. Please produce a copy of the copies or descriptions of employee benefit plans.
17. Please produce a copy of the schedule of insurance in force, for example key-man life, property and casualty, liability, etc.
18. Please produce a copy of the budgets or projections, if available.
19. Please list of distributions for the past five years

#### **Company and other Documents relating to the Rights of Owners**

20. Please produce a copy of the organizational documents, including articles of incorporation, by-laws, any amendments to either, and corporate minutes.
21. If a partnership applies to any part of the business, please produce a copy of the, articles of partnership, with any amendments.
22. Please produce a copy of the any existing buy/sell agreements, options to purchase stock or partnership interest, rights of first refusal, trust agreements, or other documents affecting the ownership rights of the interest being valued.

#### **Other information**

23. Please state a brief history, including how long in business and details of any changes in ownership and/or bona-fide offers received.
24. Please provide a brief description of business, including position relative to competition and any factors that make the business unique.
25. Please produce a copy of the organization chart, if one exists.
26. Please state any information on related-party transactions.

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- 27.** Please produce a copy of the marketing literature, for example, catalogs, brochures, advertisements, etc.
- 28.** Please list locations where company operates, with size, and whether owned or leased.
- 29.** Please list which states or metropolitan locales in which it is licensed to do business.
- 30.** Please state if the client base is concentrated and list all major accounts with annual dollar volume for each.
- 31.** Please list of referral sources, including proportional revenue attribution.
- 32.** Please list competitors, with location, relative size, any other relevant factors impacting the business.
- 33.** Please produce a copy of the resumes of, or list of, key personnel, with age, position, compensation, length of service, education, and prior experience.
- 34.** Please state which trade associations to which company belongs or would be eligible for membership.
- 35.** Please produce a copy of the relevant trade or government publications listing the business.
- 36.** Please state any existing indicators of asset values, including latest property tax assessments and any appraisals which have been done.
- 37.** Please list patents, copyrights, trademarks, and other intangible assets owned or under control of the business.
- 38.** Please state any contingent or off-balance-sheet assets or liabilities (pending lawsuits, compliance requirements, warranty or other product liability, etc.) impacting the business.
- 39.** Please produce a copy of any filings or correspondence with regulatory agencies.
- 40.** Please provide any information on prior equity transactions.

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## **Financial Statements**

1. A copy of the business' electronic financial data (i.e. QuickBooks data file)
2. Balance sheets, income statements, statements of changes in financial position or statement of cash flows, and statements of stockholders' equity or partners' capital accounts for up to the last five fiscal years, if available.
3. Income tax returns for the same years
4. Latest interim statements if valuation date is three months or more beyond end of last fiscal year and interim statement for the comparable period the year before
5. List of subsidiaries and/or financial interests in other companies, with relevant financial statements
6. Detailed general ledgers for up to the last five fiscal years

## **Other Financial Data**

1. Equipment list and depreciation schedule
2. Aged accounts receivable list
3. Aged accounts payable list
4. List of prepaid expenses
5. Inventory list, with any necessary information on inventory accounting policies (including work in process, if applicable)
6. Lease or leases (if lease does not exist or is not transferable, determine what new lease or rental terms will be)
7. Any other existing contracts (employment agreements, covenants not to compete, supplier and franchise agreements, customer agreements, royalty agreements, equipment lease or rental contracts, loan agreements, labor contracts, employee benefit plans, and so on)
8. List of stockholders or partners, with numbers of shares owned by each or percentage of each partner's interest in earnings and capital
9. Compensation schedule for owners, including all benefits and personal expenses
10. Copies or descriptions of employee benefit plans
11. Schedule of insurance in force (key-man life, property and casualty, liability)
12. Budgets or projections, if available
13. List of distributions for the past five years

## **Company and other Documents relating to Rights of Owners**

1. If a corporation, articles of incorporation, by-laws, any amendments to either, and corporate minutes
2. If a partnership, articles of partnership, with any amendments

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3. Any existing buy/sell agreements, options to purchase stock or partnership interest, rights of first refusal, trust agreements, or other documents affecting the ownership rights of the interest being valued

### **Other information**

1. Brief history, including how long in business and details of any changes in ownership and/or bona-fide offers received
2. Brief description of business, including position relative to competition and any factors that make the business unique
3. Organization chart, if one exists
4. Information on related-party transactions
5. Marketing literature (catalogs, brochures, advertisements, and so on)
6. List of locations where company operates, with size, and whether owned or leased
7. List of states in which licensed to do business
8. If client base is concentrated, list of major accounts, with annual dollar volume for each
9. List of referral sources, including proportional revenue attribution
10. List of competitors, with location, relative size, any other relevant factors
11. Resumes of, or list of, key personnel, with age, position, compensation, length of service, education, and prior experience
12. Trade associations to which company belongs or would be eligible for membership
13. Relevant trade or government publications
14. Any existing indicators of asset values, including latest property tax assessments and any appraisals that have been done
15. List of patents, copyrights, trademarks, and other intangible assets
16. Any contingent or off-balance-sheet assets or liabilities (pending lawsuits, compliance requirements, warranty or other product liability, and so on)
17. Any filings or correspondence with regulatory agencies
18. Information on prior equity transactions

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## **MARITAL ESTATE REQUESTS**

1. ROG – Please list all assets that have not been disclosed in your Financial Disclosure Forms on file with the Court.
2. RFP - Produce any and all documents relating to any property of any sort or nature, including but not limited to any personal or real property, which you claim as separate property, including documentation identifying the source of the separate property and documentation which supports your claim that the property in question is your separate property.
3. RFP - Please produce all documents relating to any personal property, i.e. furniture, jewelry, entertainment, car household items, etc. or other personal property of value in excess of \$1,000.00 that you purchased/leased for the past 3 years which is in your possession or in which you have an ownership interest, whether acquired by financing or otherwise.
4. ROG - Please list all financial institutions in which you have had any type of checking, savings, money market, certificate of deposit, or other type of account for the past 3 years. This should also include any accounts into which you have made any deposits or from which you have the right to withdraw.
5. RFP - Please produce copies of all monthly statements from all banking or financial institutions in which you have had any type of checking, savings, money market, certificate of deposit, or other type of account for the past 3 years. This should also include any accounts into which you have made any deposits or from which you have the right to withdraw.
6. RFP - Please produce copies of all withdrawal statements, whether by bank teller or an automated transfer machine (commonly referred to as an “ATM”), or otherwise, and all advances of credit to or from banking or financial institutions in which you have had any type of checking, savings, money market, certificate of deposit, or other type of account for the past 3 years.
7. RFP - Please produce copies of all deposit slips for all deposits to all accounts banking or financial institutions in which you have had any type of checking, savings, money market, certificate of deposit, or other type of account for the past 3 years.
8. RFP - Please produce copies of all passbooks, check registers, or other ledgers reflecting the activity and account balances in the accounts of banking or financial institutions in which you have had any type of checking, savings, money market, certificate of deposit, or other type of account for the past 3 years.

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9. RFP - Please produce any and all documents relating to monies you are entitled to receive, including, but not limited to notes, promissory notes, bills, statements, or invoices, evidencing any current or past accounts receivable.
10. ROG - Please list all individuals and business entities to whom you have loaned money, whether by verbal or written commitment for the past 3 years.
11. RFP - Please produce all documentation regarding each retirement, profit sharing, health savings plan, Deferred Compensation Account, IRA, Keogh, 401K, pension plan, mutual funds, and stocks and bonds accounts in which you have or had an interest in for the past 3 years, whether vested or unvested, whether under your name or an alias or other individual entity or with or to another individual, including but not limited to, all benefit statements, most recent year-end or quarterly benefit statements, and Summary Plan Description or benefits booklet.
12. RFP - If anyone other than your spouse, for example your mother and her trust, is, or has been, contributing to payment of your expenses within the past 3 years through to the present, please provide all documentation regarding their contributions, including but not limited to bank statements, receipts, cancelled checks, cash receipts, income tax returns, and copies of all bills that individual(s) has been contributing payments towards.
13. ROG - Please list all motor vehicles, including cars, jet skis, boats or otherwise, purchased or leased by you, in whole or in part with another, in the past 3 years; and include year, make, model, purchase price and transfer value, and its current physical location.
14. RFP – Please produce all supporting documentation, including purchase agreements, sales documents, lease agreements, title documents, etc., for all motor vehicles, including cars, jet skis, boats or otherwise, purchased or leased by you, in whole or in part with another, in the past 3 years.
15. RFP – Please produce all documents relating to any real property in which you have an interest, along with the date of acquisition, source of funds used to purchase, and the current market value of each such piece of real property.
16. RFP - Please produce copies and the dates of purchase of all life insurance policies, whether whole life, term, universal life, or other type of life insurance policy; all disability insurance policies; and health insurance policies, which you possess, own, or in which you have/had an interest, or purchased for other individual(s) for the past 3 years.
17. RFP – Please produce copies of any and all securities and investments owned by you and not reflected in any brokerage account records for the past 3 years.

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18. RFP – Please produce all documents evidencing debt incurred by you, including, but not limited to credit card debt, store accounts, or line of credit statements, whether closed or open and whether used or unused, including all statements for the past 3 years.
19. RFP - Please produce records that related to any secured or unsecured personal loans, verbal or written, made to you or made by you to any individual or entities for the past 3 years.
20. RFP - Please produce copies of any and all notes, promissory notes, bills, statements, invoices, and/or “pledge agreements” evidencing any current indebtedness and/or obligations payable by you for the past 3 years.
21. RFP - Please produce a recent credit report for yourself.
22. RFP - Please produce copies of your personal Federal and State Income Tax R eturns for the past 3 years, including all attachments and schedules.
23. RFP - For any years in which you have not filed a personal Federal or State Income Tax Return, please produce all proof of income from whatever source derived, including, but not limited to, Form W-2, Form W-2 G, and Form 1099 for the past 3 years.
24. RFP – Please produce a copy of your current Last Will and Testament, Living Trust and Irrevocable Trust documents or other estate planning documents.
25. RFP - Please produce copies of any other trust documents for trusts in which you may have a present or contingent interest, including the certificates, if any, together with copies of all statements, receipts, disbursements, investments and other transactions during the past 3 years.
26. RFP – Please produce copies of all gift tax returns that were ever filed by you.
27. ROG – Please list all active legal actions filed against you personally, or against any entity in which you have an ownership interest, including the caption name, case number, and jurisdiction.
28. RFP – Please produce copies of all complaints filed on your behalf in which you have sought damages, including those arising out of contractual obligations and personal injuries, which you have or will have a favorable gain for the past 3 years.
29. RFP - Produce copies of all judgments in your favor for money and damages entered and filed which remain unresolved.

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30. ROG - Provide list of any and all trusts including any overseas and offshore accounts created by you or to which you have contributed in any way.
31. ROG - If you have any safe deposit boxes, vaults, safes, or home safes, or other places of deposit or safekeeping in which you deposit money, documents or other items of personal property, for each, please provide a complete inventory of the contents and, if applicable, the names, the addresses of the branch of the depository institutions where you presently have items.
32. RFP – Please produce a copy of all pages of your passport.
33. ROG - Have you taken any vacations or personal or business trips within the past 3 years? If so, please state the following for each trip that you have taken: dates of departure and return; destination; nature of the trip (i.e. business, personal vacation, etc.); who accompanied you; and, the full cost of travel (i.e. airfare, hotel, meals, gifts, etc.).
34. ROG – Please provide list of any aliases, alter ego, fictitious names and/or business name that are currently used by you, or have been used by you for the past 5 years.
35. ROG – For the past 3 years, at which gaming establishments have you gambled?.
36. ROG - What gaming markers, credit lines, hotel credit do you have?
37. ROG – To which slot clubs do you belong?
38. ROG - What markers, lines of credit, and “comps” (free meals and/or rooms) have you received?

## INTERROGATORIES

### **Wishes of the Child**

1. Have the children expressed a preference to live with you? If so, state: 1) each date on which such preferences were expressed; 2) the circumstances giving rise to such expressions; and, 3) the words used by each child in expressing such preferences.

### **More Likely to Allow the Child to Have Frequent Associations and a Continuing Relationship with the Non-custodial Parent**

2. Describe in detail the reasons why you believe it is in the child's best interests for you to be granted joint or primary physical custody.
3. State what you consider to be the best custodial arrangements for your child, and detail your reasons.
4. If you are not granted primary physical custody, state with specificity the visitation that you believe would be appropriate.
5. Do you plan to relocate within the next three years? If so, describe your relocation plans.
6. Do you object to your children being removed from the immediate geographical area by the other parent? If so, state, your objections and what provisions you would like imposed on travel.
7. Describe in detail the actions have you taken to foster the relationship between the child and the other parent?

### **Level of Conflict**

8. List the name, address, and telephone number of each person who has knowledge of relevant facts concerning the issues of custody and visitation involved in this case, and for each such person state the nature of the knowledge.

### **Ability of the Parents to Cooperate to Meet the Needs of the Child**

9. State whether you and the other parent have any major disagreements regarding the children's education, religious upbringing, discipline, health care needs, and/or extracurricular activities, and if so, detail the nature of each such disagreement and each party's position as you perceive it.

## **Mental and Physical Health of the Parents**

10. Do you believe there is anything about the other parent that renders him/her unfit to have primary or joint physical custody of the child? If so, describe with specificity such unfitness.
11. Describe your current state of health, both mental and physical, and list the name, address, and telephone numbers of each physician, medical clinic, or nurse practitioner you have consulted for yourself during the last 3 years, and with respect to each consultation, state the date, purpose, diagnosis, and treatment.
12. Are you currently taking any medications? If so, list each medication, the dates on which you have taken it, and its purpose, and which drug store you obtained the prescription.
13. Have you ever been forcefully removed from your home or a public place by the police or the owner including security personnel of the premises. If yes, please explain in detail, giving the dates, place and events of each incident.

## **Physical, Developmental, and Emotional Needs of the Child**

14. State the address at which you and the child would reside if you were granted primary, or joint physical custody, and describe with specificity the child's proposed living quarters.
15. List the name, address, telephone number, and dates of contact for each physician or dentist to whom you have personally taken the child for evaluation or treatment.
16. Would you be able to devote yourself full time to the child's care and upbringing if you were granted primary custody. If not, state: 1) what proportion of each day you intend to spend with the child; 2) how you intend to provide for the child's care when you are unavailable, naming each person and/or institution that will be hired for this purpose; and, the reason you cannot devote yourself full time to the child's care.
17. List the dates since your separation from your spouse when the child has physically resided with you, and for each such period state whether any person or institution has cared for the child during that time, and if so, provide the provider's name, address, telephone number, the circumstances warranting such care, and the dates and times during which such care was provided.
18. Describe your plans for the child's educational development and how you intend to implement such plans.

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19. Describe your plans for the child's religious education and development and how you intend to implement such plans.
20. Describe your plans for the child's extracurricular activities and how you intend to implement such plans.
21. State with specificity what behaviors the other parent must demonstrate to have physical custody of the child and how you will measure whether these behavioral objectives are being accomplished.
22. Please list any and all individuals who are close family friends or related to the child who live within a 100-mile radius of your residence.
23. Please state the amount of payments made by you for the support or benefit of the child, including cash outlays and payments by check for bills and expenses during the twelve months prior to the date of this response.
24. While in your custody and control, has the child suffered any injuries which required medical attention? If yes, please provide a list of the dates, extent of injury, and circumstance of the injury, and where, or by whom, treatment was provided.
25. Have you, as the caretaker, ever been investigated by any organization such as Child Protective Services? If so, please provide the dates and events which led to the investigation, the name of the organization, and the name of the investigator.
26. Please provide a summary of your normal daily schedule, i.e. work schedules, any routine/recurring activities, times, etc., for both weekdays and weekends.
27. Please provide a list of names, including addresses, of people with whom you have discussed this case within the past year.

### **Nature of the Relationship of the Child with Each Parent**

28. Describe with specificity why you feel you would be a better primary physical custodian than the other parent.
29. State with specificity your greatest strengths and weaknesses as a parent.
30. State with specificity the other parent's greatest strengths and weaknesses as a parent.
31. Describe how you discipline your child.

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32. Do you plan to remarry, or cohabit with another for more than 30 days? If so, describe with specificity the relationship between the child and the future step-parent.
33. Please provide a detailed explanation of how you discipline the child while in your custody and control.

### **History of Parental Abuse or Neglect of the Child or a Sibling of the Child**

34. Identify by title, county, state, and case number any legal actions in which you have been named as a party regarding abuse or the best interests of your children.

### **Domestic Violence Against the Child, a Parent of the Child, or Any Other Person Residing with the Child**

35. Have you ever committed any of the following acts against the other parent, a former spouse, any other person to whom the child is related by blood or marriage, a person with whom the child is or was actually residing, or anyone you have dated or their child: battery, assault, compelling the other by force or threat of force to perform an act from which he/she has the right to refrain or to refrain from an act which he has the right to perform, or a sexual assault? If yes, please provide specific details for each event.
36. Have you ever committed any of the following acts against the other parent, a former spouse, any other person to whom the child is related by blood or marriage, a person with whom the child is or was actually residing, or anyone you have dated or their child: a course of conduct intended to harass the other, including, but not limited to stalking, arson, trespassing, larceny, destruction of private property, carrying a concealed weapon without a permit, injuring or killing an animal, false imprisonment, unlawful entry of the other's residence, or forcible entry against the other's will if there is a reasonably foreseeable risk of harm to the other from the entry? If yes, please provide specific details for each event.

### **Miscellaneous**

37. Have you, or anyone acting on your behalf contacted, or in any manner, communicated with any private investigator or detective in the last five (5) years concerning any investigation or surveillance of the activities of the other parent? If so, set forth in full all details of such investigation or surveillance, including but not limited to, the full name(s) and address(es) of such persons you contacted, the approximate date(s) on which you contacted or communicated with these persons, and any documents generated or created as a result thereof, including letters,

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memoranda, photographs and reports.

## **REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS**

### **Wishes of the Child**

1. Produce any writings or pictures drawn by the child indicating the wishes of the child for a parental preference for custody. Detail the circumstances the writing was produced.

### **More Likely to Allow the Child to Have Frequent Associations and a Continuing Relationship with the Non-custodial Parent**

2. Produce any and all writings, including emails, from you where contact or visitation was restricted or cancelled for any reason. Detail the circumstances the writing was produced.

### **Level of Conflict**

3. Produce and all writings from you, including emails, which state or indicate disagreement with the other parent over co-parenting or visitation of the child.

### **Ability of the Parents to Cooperate to Meet the Needs of the Child**

4. Produce any and all papers for the past three years, including medical records, which reflect any impact on your health, mental or physical, except for physical only illnesses lasting in duration of two weeks or less.

### **Physical, Developmental, and Emotional Needs of the Child**

5. Please provide any and all medical records or any other documentation as to any medical provider that has seen and/or treated the child.
6. Please provide any and all receipts you have as to medical care for the child.
7. Please produce copies of any and all documents relating to any roommates you have had for the past three years, including but not limited to, lease agreements with apartment complexes co-signed by roommates, or written agreements between you and others for the purpose of shared living quarters.
8. Please produce copies of all police incident reports for the past three years relating to you, inclusive of those initiated by you or against you, arrest warrants, confinement record, and/or restitution arrangements to avoid prosecution.

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9. Please produce copies of all documents for the past three years showing any and all payments of child support you have received from any source.
10. Please produce copies of all documents for the past three years showing any and all medical expense reimbursements and medical insurance premiums paid by you or to you from any source.

**Nature of the Relationship of the Child with Each Parent**

11. Please produce any and all writings, including emails and/or drawings by the child, describing or showing the relationship between you and the child.

**History of Parental Abuse or Neglect of the Child or a Sibling of the Child**

12. Reserved.

**Domestic Violence Against the Child, a Parent of the Child, or Any Other Person Residing with the Child**

13. Reserved.

**Miscellaneous**

14. Reserved.

## **DISCOVERY FOR BUSINESS VALUATIONS**

### **Financial Statements and Tax Returns**

1. ROG - For each entity in which you have an ownership interest, please list all subsidiaries and/or financial interests with the full name, any “doing business as” names, principal place of business, and contact information for the resident agent.
2. RFP - For each entity in which you have an ownership interest, please produce a copy of the business’ electronic financial/accounting data, e.g. QuickBooks data file. If accounting records are not maintained in electronic form, then please provide hard copies of all detailed general ledgers and journals for the years 20\_\_ through 20\_\_.
3. RFP - For each entity in which you have an ownership interest, please produce a copy of balance sheets, income statements, statements of changes in financial position or statement of cash flows, and statements of stockholders’ equity, members’ capital accounts and/or partners’ capital accounts for years 20\_\_ through 20\_\_, and year-to-date 20\_\_.
4. RFP - For each entity in which you have an ownership interest, please produce a complete copy of all income tax returns for years 20\_\_ through 20\_\_.
5. ROG – For each entity in which you have an ownership interest, please state whether there are any pending examinations or prior examinations, since 20\_\_, of tax returns or other tax filings with the Internal Revenue Service or with other taxing authorities
6. RFP - For each entity in which you have an ownership interest, please produce copies of all federal and state examination reports generated by audits of any tax returns or other tax filings since 20\_\_.
7. RFP – For each entity in which you have an ownership interest, please produce copies of the Form W-2 prepared for each employee of such entities for years 20\_\_ through 20\_\_.
8. RFP – For each entity in which you have an ownership interest, please produce copies of the Form 1099 prepared for any person or entity that received \$5,000 or more for in any 12 month period from 20\_\_ through 20\_\_.
9. RFP - For each entity in which you have an ownership interest, please produce a copy of the most recent interim financial statements.

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10. RFP - For each entity in which you have an ownership interest, please produce a copy of a list of machinery, equipment, furnishings and leasehold improvements list and depreciation schedules supporting tax returns and financial statements for years 20\_\_ through the present.
11. RFP - For each entity in which you have an ownership interest, please produce a copy of the aged accounts receivable list as of December 31, 20\_\_ and December 31, 20\_\_.
12. RFP - For each entity in which you have an ownership interest, please produce a copy of the aged accounts payable list as of December 31, 20\_\_ and December 31, 20\_\_.
13. RFP - For each entity in which you have an ownership interest, please produce a copy of a detailed inventory list as of December 31, 20\_\_ and December 31, 20\_\_, with any necessary information on inventory accounting policies, including work in process, if applicable.
14. RFP - For each entity in which you have an ownership interest, please produce all promissory notes, loan agreements, security agreements and other documentation relative to each entity's lines of credit (whether or not used) and all other loans and any other financing agreements with bank(s) or any other lenders in effect from January 1, 20\_\_ through the present.
15. RFP - For each entity in which you have an ownership interest, please provide promissory notes or evidence of indebtedness for loans made by each entity to the owners and for loans made by the owners to each entity.
16. RFP - For each entity in which you have an ownership interest, please produce copies of any year-end financial statements prepared for submission to any third party, for any purpose, between January 1, 20\_\_ and the present, including copies of any interim financial statements prepared for the purpose of obtaining a loan, credit rating or a license to do business during that period.
17. RFP - For each entity in which you have an ownership interest, please produce copies of all personal financial statements prepared for you between January 1, 20\_\_ and the present, including interim financial statements prepared for the purpose of obtaining a business loan, credit line or credit rating.
18. ROG – Please describe the nature of and reasons for the liability appearing on the Statement of Assets, Liabilities and Equity – Income Tax Basis of [Company Name] in the amount of \$ \_\_\_\_\_ as of [Date], captioned as “\_\_\_\_\_”.

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## Other Financial Data

19. RFP - For each entity in which you have an ownership interest, please produce complete copies of all leases that were in effect during 20\_\_ through 20\_\_, and that are presently in effect, whether for real property or personal property.
20. RFP - For each entity in which you have an ownership interest, please produce a copy of any existing contracts that are presently in effect, including, but not limited to, employment agreements, covenants not to compete, supplier and franchise agreements, customer agreements, royalty agreements, and labor contracts.
21. RFP - For each entity in which you have an ownership interest, please produce a blank copy of each type of invoice or other type of statement used for billing customers.
22. ROG - For each entity in which you have an ownership interest, please produce a list of each customer whose purchases t has constituted twenty percent or more of the total revenue for each year from 20\_\_ through 20\_\_.
23. ROG - For each entity in which you have an ownership interest, please produce a list of showing the percentage breakdown of revenue by each type of product and service for each year from 20\_\_ through 20\_\_.
24. ROG - For each entity in which you have an ownership interest, please produce a list showing the percentage breakdown of revenue by type of sales mechanism, e.g. direct sales, sales by distributors and sales via the Internet for each year from 20\_\_ through 20\_\_.
25. ROG - For each entity in which you have an ownership interest, please produce a list of the entity's major suppliers and the percentage of purchases from those of them who currently supply more than 25% of the entity's purchases from all it suppliers.
26. RFP - For each entity in which you have an ownership interest, please list all stockholders, members or partners, with the numbers of shares or units currently owned by each or, in the case of partnerships or limited liability companies, the percentage of each partner's or member's interest in earnings and capital.
27. ROG – For each entity in which you have an ownership interest, please provide the average number of hours each owner and key employee currently works per week, and the number of hours each such person worked per week for each year since January 1, 20\_\_.

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28. RFP - For each entity in which you have an ownership interest, please produce a copy of a schedule of compensation for each owner, including all perquisites and other benefits, for years 20\_\_ through 20\_\_.
29. RFP - For each entity in which you have an ownership interest, please produce a copy of the summary plan description or other details for each type of employee benefit plan, including, but not limited to, 401(k) plans, other defined contribution plans, defined contribution plans, SEP-IRAs, defined benefit plans, deferred compensation plans, whether qualified or nonqualified, health plans, disability plans, and incentive bonus plans.
30. RFP - For each entity in which you have an ownership interest, please produce a copy of the portions of insurance policies that provide policy owner, beneficiary(ies), amount of coverage and other pertinent details, for all business insurance and life insurance on owners and other key employees, whether the entity or one or more owners are the beneficiaries.
31. RFP - For each entity in which you have an ownership interest, please produce a copy of the current budgets or projections.
32. ROG - For each entity in which you have an ownership interest, please list all distributions made to each owner from January 1, 20\_\_ to the present.
33. ROG – Please produce a list of all credit and debit cards held at any time in the past five years in your name, for entities in which you have an ownership interest, and a list of all credit cards, and copies of the monthly statements and year end account summaries for each such card.
34. RFP – For [Company Name], please provide copies of all receipts, billings, and other documentation supporting Meals and Entertainment and Travel Expenses, which, for the \_\_\_ months ending [Date], totaled \$ \_\_\_ and \$ \_\_\_, respectively, as appearing on the Statement of Revenues and Expenses – Income Tax Basis.
35. RFP - For [Company Name], please provide copies of all invoices supporting Accounting Fees, which, for the \_\_\_ months ending [Date], totaled \$ \_\_\_, as appearing on the Statement of Revenues and Expenses – Income Tax Basis.
36. RFP - For [Company Name], please provide copies of all invoices supporting Professional - Legal, which, for the \_\_\_ months ending [Date], totaled \$ \_\_\_, as appearing on the Statement of Revenues and Expenses – Income Tax Basis.
37. RFP - For [Company Name], please provide copies of all invoices supporting Professional - Consulting, which, for the \_\_\_ months ending [Date], totaled

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\$\_\_\_\_\_, as appearing on the Statement of Revenues and Expenses – Income Tax Basis.

38. RFP - For [Company Name], please provide copies of all invoices supporting Accounting Fees, which, for the \_\_\_\_ months ending [Date], totaled \$\_\_\_\_\_, as appearing on the Statement of Revenues and Expenses – Income Tax Basis.
39. ROG - For [Company Name], please provide a listing of the recipients of, and the amount received by each person for, Directors Fees, which, for the \_\_\_\_ months ending [Date], totaled in the amount of \$\_\_\_\_\_, as appearing on the Statement of Revenues and Expenses – Income Tax Basis.
40. ROG - For [Company Name], please provide a listing of the recipients of, and the amount received by each person for, Management Fees, and an explanation of the nature of such Management Fees, which, for the \_\_\_\_ months ending [Date], totaled in the amount of \$\_\_\_\_\_, as appearing on the Statement of Revenues and Expenses – Income Tax Basis.

#### **Company and other Documents relating to the Rights of Owners**

41. RFP – For each entity in which you have an ownership interest, please produce a copy of the organizational documents, including articles of incorporation or articles of organization, by-laws, and any amendments to such documents.
42. RFP - For each entity in which you have an ownership interest, please produce a copy of the buy-sell agreement and/or shareholder agreement, partnership agreement, and operating agreement, and any amendments to such documents.
43. RFP - For each entity in which you have an ownership interest, please produce a copy of the any agreements regarding options to purchase stock, a partnership interest or a member interest, trust agreements, or other documents affecting the ownership rights of the interest being valued.
44. RFP – Please produce copies of all employment agreements in effect for any of the businesses in which you have an ownership interest.

Under the section **Company and other Documents relating to the Rights of Owners** there should be a generic RFP (not necessarily for the Sasz valuations) that says “For each corporation in which you have an ownership interest, please provide copies of all stock certificates”. I don’t know (but you do) if you can ask for the stock certificates of all the owners, especially if the client has a minority ownership interest.

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## **Other information**

45. ROG - For each entity in which you have an ownership interest, please state a brief history of the business, including any changes in ownership, and a description of the nature of the business.
46. ROG – For each entity in which you have an ownership interest, please provide copies of all prior valuations, whether for the business enterprise as a whole or any portion of the enterprise.
47. ROG - For each entity in which you have an ownership interest, please describe any other existing indicators of asset values, including the two most recent years' property tax assessments and any types of appraisals that have been done.
48. ROG- For each entity in which you have an ownership interest, please provide copies of all letters of intent, deal memos, or other drafts of offers for the purchase of the entity or any portion of ownership thereof.
49. ROG - For each entity in which you have an ownership interest, please provide a list of the major competitors, along with the location of each, and describe what advantages and disadvantages the entity has vis-à-vis other similar businesses.
50. ROG - For each entity in which you have an ownership interest, please provide information on the extent to which competitors' pricing has affected the pricing policies of the entity.
51. RFP - For each entity in which you have an ownership interest, please produce a copy of the organization chart, if one exists.
52. ROG - For each entity in which you have an ownership interest, please describe the means that are used to market and advertise the entity's products and services.
53. RFP - For each entity in which you have an ownership interest, please produce a copies of the marketing materials, such as catalogs, brochures, advertisements, etc.
54. ROG - For each entity in which you have an ownership interest, please list which states or metropolitan locales in which the entity is licensed to do business.

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55. ROG - For each entity in which you have an ownership interest, please list locations where entity operates and the geographical area in which the company provides products and services.
56. ROG - For each entity in which you have an ownership interest, please state if the client base is concentrated and list all major accounts with annual dollar volume for each.
57. ROG - For each entity in which you have an ownership interest, please list referral sources and indicate how the revenue generated from such referral sources is shared.
58. RFP - For each entity in which you have an ownership interest, please provide a résumé for each owner and key management person or, alternatively, information regarding such person's education, work experience, and length of time working for the entity.
59. ROG - For each entity in which you have an ownership interest, please state the trade associations to which company belongs or would be eligible for membership.
60. RFP - For each entity in which you have an ownership interest, please produce a copy of the relevant trade or government publications that list the business.
61. ROG - For each entity in which you have an ownership interest, please list patents, copyrights, trademarks, and other intangible assets owned or under control of the entity.
62. ROG - For each entity in which you have an ownership interest, please describe the details regarding any violations with any regulatory agencies, including, but not limited to, any environmental violations within the last two years.
63. RFP - For each entity in which you have an ownership interest, please provide all notices received for violations committed by entity and for penalties and other sanctions imposed on the entity within the last two years.
64. ROG - For each entity in which you have an ownership interest, please describe the details of any pending litigation by or against the entity, the present status of the litigation, the expected outcome, and the names of counsel for the entity and for the opposing side.
65. ROG - Please describe the details of any pending litigation by or against you or any owner of the entity relative to the business of the entity, and indicate the present

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status of the litigation, the expected outcome, and the names of counsel for you or the other owner and for the opposing side.

66. ROG - For each entity in which you have an ownership interest, please describe any other contingent or off-balance-sheet liabilities, including, but not limited to, compliance requirements, warranties, and other potential or contingent liabilities relative to products or services sold.
67. RFP - For each entity in which you have an ownership interest, please produce a copy of any filings or correspondence with regulatory agencies.
68. ROG – Please describe the reasons that funds have been transferred to \_\_\_\_\_ from [Company Name], e.g. \$\_\_\_\_\_ as of [Date], according to the Statement of Assets, Liabilities and Equity – Income Tax Basis of [Company Name].
69. ROG – Is interest accruing or being paid to [Company Name] on its receivable for the funds loaned to \_\_\_\_\_? If so, what is the interest rate being charged and how often is the interest being accrued and paid?
70. ROG – Do you have an ownership interest or a derivative interest in \_\_\_\_\_? If so, please explain the nature and extent of your interest.
71. ROG – Please provide a detailed description your tasks, responsibilities, decision making authority and other roles as Director, Vice-President, Secretary and Treasurer of \_\_\_\_\_ to the extent that your responses to other interrogatories have not included such information.
72. RFP – Please produce any and all records and/or any receipts for any gifts, trips, expenses paid, etc., by you, either personally, or through an entity in which you have an ownership interest, for the benefit of a third party.
73. ROG – Please identify and list all items located in your professional office(s) that are have a value of more than one thousand dollars (\$1,000.00).
74. ROG – For each entity in which you have an ownership interest, please provide a description or future plans for the entity in terms of growth – increased marketing and advertising, introduction of new products or services, accepting new owners, merging the entity with another company, consolidating exiting entities, changing existing locations, acquiring new locations, etc.

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## Financial Discovery Checklist

- All personal balance sheets and financial statements for the last \_\_\_\_ years.
- Personal income tax returns (Form 1040) for the last \_\_\_\_ years, including any amended returns.
- W-2 and/or pay stubs for all years for which personal income tax returns have not yet been completed or filed.
- Copies of personal financial statements prepared for any purpose in the last \_\_\_\_ years.
- List of all bank accounts in the party's name or to which the party has access, including the bank name, bank location, account number and type of account.
- List of all bank accounts in the party's name or to which the party has access that have been closed within the last \_\_\_\_ years, including the bank name, location, account number, and type of account.
- List of all credit cards, full account numbers, and current balances for any card in the party's name, or with which the party has charging authority. *(This includes credit cards that the party uses but that are paid by a business or other entity)*
- Detailed list of any investments, ownerships, or other interests in brokerage accounts, Treasury bills, bonds, stocks, stock options, stock warrants, bonds, debentures, guaranteed investment certificates, annuities, term deposits, bankers' acceptances, limited partnerships, commercial partnerships, joint ventures, pension plans, 401(k) plans, individual retirement accounts, employee stock option plans (ESOPs), profit-sharing plans, put options, call options, tax shelters, and any other investments of any nature, whether held directly, indirectly, or in any other manner whatsoever.
- Copies of all applications for credit made with banks, mortgage brokers, or any other financial institution in the preceding \_\_\_\_ years.
- List of any deposits held in escrow for or by the party.
- List of all safety deposit boxes in the party's name and names of the party's nominees, including the location of each box, a list of the contents, all the people with access to each box, and a schedule of all visits to the boxes in the preceding \_\_\_\_ years.
- Copies of all life insurance policies.
- Copies of all wills and trusts under which the party is a capital beneficiary or income beneficiary.
- List of all vehicles owned or leased by the party or for the party's personal use, including automobiles, boats, snowmobiles, personal watercraft, motorcycles, and aircraft.
- List of real estate interests owned by the party directly, indirectly, or in any manner whatsoever.
- Details of alterations, improvements, or renovations in excess of \$5,000 made to the party's residence in the preceding \_\_\_\_ years.
- Schedule of all gifts or transfers in excess of \$2,500 made by the party to any individual or business entity in the preceding \_\_\_\_ years, including the recipient, the nature of the gift, the gift's value, the date of the transfer, the relationship to the recipient, and any documentation related to the gift.
- List all sources of remuneration, including salaries, bonuses, stock options, expense allowances, auto allowances, club memberships, entertainment, sports events, or any other compensation.

- List of all persons to whom the party has given power of attorney during the preceding \_\_\_\_\_ years.
- List of all trusts established by the party during the preceding \_\_\_\_\_ years, including the names of all principal and income beneficiaries.

**If supporting documentation for assets is deemed necessary, request:**

- Copies of all insurance policies covering real estate, vehicles, boats, personal effects, and any other assets.
- Copies of all tax assessments of real estate owned.

**If a detailed analysis of spending is deemed necessary, request:**

- Copies of all bank statements, checks, deposit slips, and wire transfers for the last \_\_\_\_\_ or \_\_\_\_\_ years for any bank accounts to which the party has access.
- Copies of all credit card statements for the last \_\_\_\_\_ or \_\_\_\_\_ years for any credit card in the party's name or with which the party has charging authority.
- Copies of all brokerage account statements for the last \_\_\_\_\_ or \_\_\_\_\_ years for any brokerage accounts to which the party has access.

**Documents to request if there have been any audits or other tax issues follow:**

- Any notices of assessment or other correspondence about examinations, additional liabilities, or other disputes with taxing authorities in the last \_\_\_\_\_ years.

**Request the following documents related to business entities wholly or partially owned by either spouse:**

- Business ownership records (stock certificates, charters, operating agreements, joint venture agreements, corporate minutes, or other related documents.)
- Business income tax returns (Form 1065, 1120, or 1120S) for any business in which the spouse/parent has had ownership interest for the last \_\_\_\_\_ years.
- Financial statements for any business entity in which there is an interest, including professional practices, joint ventures, and co-ownerships for the last \_\_\_\_\_ years.
- Copies of valuations or appraisals done within the preceding \_\_\_\_\_ years.
- Copies of budgets, forecasts, projections, or business plans prepared within the preceding \_\_\_\_\_ years.
- List of all bank accounts in the company's name, including the bank name, location, account number, and type of account.
- List of all bank accounts in the company's name that have been closed within the last \_\_\_\_\_ years, including the bank name, location, account number, and type of account.

- Copies of all books of minutes for companies controlled directly or indirectly by the party, including articles of incorporation, amendments, bylaws, minutes, and resolutions of shareholders and directors.
- Copies of all applications for credit cards made with banks, mortgage brokers, or any other financial institution in the preceding \_\_\_\_\_ years.

**If more in-depth analysis of the business entities is necessary, request the following:**

- Copies of employee-related documents, including payroll records for the preceding \_\_\_\_\_ years, copies of fringe benefits (including insurance, medical reimbursement, or cafeteria plans), vacation policy, sick pay policy, child and dependent care plans, bonus computations, commission plan, and tuition reimbursement plans.
- Copies of all employee contracts.
- Copies of deferred compensation and retirement plan records, including plan documents for any pension plan, profit sharing plan, 401(k), or any other plan.
- Copies of all buy-sell agreements.
- List of all customers and copies of all major customer contacts.
- Copies of lease agreements
- Copies of all notes payable.
- Copies of all appraisal of fixed assets within the last \_\_\_\_\_ years.
- Copies of depreciation schedules.
- Copy of current accounts receivable aging report.
- Copy of detailed inventory listing.
- Schedule of investments.
- Copies of all notes receivable.
- Copies of documents related to all patents, trademarks, and copyrights owned by the company or in the process of being filed.

**If there are any questions about the legitimacy of the financial statements or tax returns of any business entity in which a spouse has an ownership interest, request the following documents:**

- Copies of valuations or appraisals done within the preceding \_\_\_\_\_ years.
- Copies of budgets, forecasts, projections, or business plans prepared within the preceding \_\_\_\_\_ years.
- Copies of all bank statements, checks, deposit slips, and wire transfers for the last \_\_\_\_\_ years.
- Copies of all credit card statements for the last \_\_\_\_\_ years.
- Copies of all brokerage account statements for the last \_\_\_\_\_ years.
- Copies of all applications for credit with any financial institution during the preceding \_\_\_\_\_ years.
- Access to detailed accounting records, including the general ledger, general journal, sales journal, purchases journal, cash receipts journal, cash disbursements journal, and subsidiary ledgers.
- List of names, address, and ownership percentages of all shareholders.

# DISCOVERY CHECK LIST

## CLIENT:

PROVIDED	RECEIVED	REQUIRED INITIAL DISCLOSURES: 6 MONTHS PRIOR TO THE SERVICE OF THE COMPLAINT THROUGH THE DATE OF THE DISCLOSURE
		<b>Evidence Supporting Financial Disclosure Form.</b> For each line item on the General Financial Disclosure Form or Detailed Financial Disclosure Form, the financial statement(s), document(s), receipt(s), or other information or evidence believed to support that answer. If no documentary evidence exists, state in writing the basis of the claim, estimate, or belief as to the number or answer provided on the form.
		<b>Evidence of Property, Income, and Earnings as to Both Parties.</b> The following must be provided to the other party:
		<b>Bank and Investment Statements.</b> Copies of all monthly or periodic bank, checking, savings, brokerage, investment, and security account statements in which any party has or had an interest for the period commencing 6 months prior to the service of the summons and complaint through the date of the disclosure
		<b>Credit Card and Debt Statements.</b> Copies of credit card statements and debt statements for all parties for all months for the period commencing 6 months prior to the service of the summons and complaint through the date of the disclosure
		<b>Real Property.</b> Copies of all deeds, deeds of trust, purchase agreements, escrow documents, settlement sheets, and all other documents that disclose the ownership, legal description, purchase price, and encumbrances of all real property owned by any party
		<b>Property Debts.</b> Copies of all monthly or periodic statements and documents showing the balances owing on all mortgages, notes, liens, and encumbrances outstanding against all real property and personal property in which the party has or had an interest for the period commencing 6 months prior to the service of the summons and complaint through the date of the disclosure; or if no monthly or quarterly statements are available during this time period, the most recent statements or documents that disclose the information
		<b>Loan Application.</b> Copies of all loan applications that a party has signed within 12 months prior to the service of the summons and complaint through the date of the disclosure
		<b>Promissory Notes.</b> Copies of all promissory notes under which a party either owes money or is entitled to receive money
		<b>Deposits.</b> Copies of all documents evidencing money held in escrow or by individuals or entities for the benefit of either party
		<b>Receivables.</b> Copies of all documents evidencing loans or monies due to either party from individuals or entities
		<b>Retirement and Other Assets.</b> Copies of all monthly or periodic statements and documents showing the value of all pension, retirement, stock option, and annuity balances, including individual retirement accounts, 401(k) accounts, and all other retirement and employee benefits and accounts in which any party has or had an interest for the period commencing 6 months prior to the service of the summons and complaint through the date of the disclosure; or if no monthly or quarterly statements are available

# DISCOVERY CHECK LIST

## CLIENT:

		during this time period, the most recent statements or documents that disclose the information
		<b>Insurance.</b> Copies of all monthly or periodic statements and documents showing the cash surrender value, face value, and premiums charged for all life insurance policies in which any party has or had an interest for the period commencing 6 months prior to the service of the summons and complaint through the date of the disclosure; or if no monthly or quarterly statements are available during this time period, the most recent statements or documents that disclose the information
		<b>Insurance Policies.</b> Copies of all policy statements and evidence of costs of premiums for health and life insurance policies covering either party or any child of the relationship
		<b>Values.</b> Copies of all documents that may assist in identifying or valuing any item of real or personal property in which any party has or had an interest for the period commencing 6 months prior to the service of the summons and complaint through the date of the disclosure, including any documents that the party may rely upon in placing a value on any item of real or personal property
		<b>Tax Returns.</b> Copies of all personal and business tax returns, balance sheets, profit and loss statements, and all documents that may assist in identifying or valuing any business or business interest for the last 2 completed calendar or fiscal years with respect to any business or entity in which any party has or had an interest within the past 12 months
		<b>Proof of Income.</b> Proof of income of the party from all sources, specifically including W-2 forms, 1099 forms, and K-1 forms, for the past 2 completed calendar years, and year-to-date income information (paycheck stubs, etc.) for the period commencing 6 months prior to the service of the summons and complaint through the date of the disclosure
		<b>Personalty.</b> A list of all items of personal property with an individual value exceeding \$200, including, but not limited to, household furniture, furnishings, antiques, artwork, vehicles, jewelry, coins, stamp collections, and similar items in which any party has an interest, together with the party's estimate of current fair market value (not replacement value) for each item

## BUSINESS VALUATION

1. Asset Approach (assets – liabilities)
  - a. Liquidation Value Method: sell everything
  - b. Net Asset Value Method: balance sheet
  
2. Income Approach (economic stream)
  - a. Capitalization Earnings Method: cap rate applied to a period of earnings
  - b. Discounted Cash Flow Method: project earnings and apply discount
  
3. Market Approach (compare to others)
  - a. Comparable Companies Method: guideline companies
  - b. Actual Sale of Stock: recount arms-length sale
  - c. Industry Formulas: ballpark ranges

Capitalization Rate (cap rate) = Discount Rate – Rate of Growth

Discount Rate = sum of all risk

Income Stream = Value of Business

Cap Rate

## Evidentiary Objections

OBJECTION	NRS	FRE	DESCRIPTION
<b>Ambiguous</b>	50.115(1)	611(A)	Question is susceptible to at least two interpretations or is so vague or unintelligible as to make it likely to confuse the trier of fact or witness.
<b>Argumentative</b>	50.115(1)	611(a)	Question does not seek information from the witness, but makes an argument to the trier of fact in the guise of a question.
<b>Asked &amp; Answered</b>	50.115(1)	611(a)	Question calls for repetitive testimony from a witness who has previously given the same testimony in response to a question.
<b>Assumes a Fact Not in Evidence</b>	50.115(1)	611(a)	Question assumes or reverences facts that have not already been proved.
<b>Authentication Lacking</b>	52.015	901(a)	Examiner must establish the identity and authenticity of a document or other physical evidence. Proof must be offered that the evidence is in fact what it is claimed to be.
<b>Best Evidence Rule</b>	52.235	1002	Original document <sup>6</sup> must be offered to prove its contents.
<b>Beyond Scope (of Direct, cross, etc.)</b>	50.115(2)	611(b)	Question does not relate to subjects raised by prior examination, or to the credibility of the witness.
<b>Bolstering</b>		608(a)	It is improper to bolster the credibility of a witness before it is attacked.
<b>Character Evidence</b>	48.045 48.055	404(a)(1) 404(a)(2) 404(b) 405(b)	A person's character is inadmissible when offered on the issue of that person's propensity to act in conformity with a character trait.
<b>Competency</b>	50.15 – 50.065	601 – 606	A witness is competent if they have the ability to perceive events about which testimony is given, communicate that perception intelligibly, and appreciate the obligations of the oath.
<b>Compound</b>	50.115(1)	611(a)	More than one question is being asked at the same time.
<b>Compromise</b>	48.105	07	Evidence of settlement negotiations are inadmissible to prove <i>liability</i> (may be relevant to show bias or undue delay).
<b>Conclusion</b>	50.025 50.265	602 701	Lay witness must only testify to facts within his or her personal knowledge.
<b>Confusing</b>	50.115(1)	611(a)	Examiner uses unfamiliar words, uses disjointed phrases, or confuses the facts or evidence.
<b>Counsel testifying</b>	50.035	603	Examiner's questioning is in the form of a statement designed to persuade the trier of fact rather than a question to the witness.
<b>Cumulative</b>	48.035 50.115(1)	403 611(a)	Evidence repeatedly presented by exhibits or testimony is unfair and wastes court's time.
<b>Foundation Lacking</b>	50.025 52.015	602 901(a)	Failure to lay proper foundation (knowledge, time, etc.) for testimony or exhibit.
<b>Hearsay</b>	51.065 61.065	802	Question calls for hearsay testimony or witness gave hearsay testimony: an out of court statement offered for the truth of the matter stated.
<b>Improper Question or Improper Form</b>	47.050 61.065	103(c) 611(a)	Catch-all objection when you know a question is improper, but cannot articulate why it is improper. Objection to form is most common.
<b>Improper Characterization</b>	48.045 48.055	404 405	Question or response improperly characterized a person. Question uses suggestive, argumentative, or impertinent language.
<b>Improper Impeachment</b>	50.075 – 50.105	607 – 610	Examiner may impeach by showing bias, prejudice, interest, motive, memory problems, or lack of veracity
<b>Irrelevant</b>	48.025	402	Testimony does not tend to make a consequential fact more or less likely.
<b>Leading</b>	50.115(3)	611(c)	The form of the question suggests its answer.
<b>Misquoting Witness or Misstating Evidence</b>	47.040	103(c) 611(a)	Question misstates evidence or prior testimony of the witness.
<b>Narrative</b>	50.115(1)	611(a)	Question is so broad as to encourage the witness to ramble and possibly present inadmissible evidence or hearsay.
<b>Opinion</b>	50.265 50.275	701 702 704	Witness is being asked to give an opinion where either expert opinion is required or where the witness has no personal knowledge.
<b>Prejudicial</b>	48.035	403	The probative value of the evidence is substantially outweighed by the danger of unfair prejudice caused by the evidence.
<b>Privilege</b>	49.015	501	Answer would violate a legal privilege.
<b>Speculation</b>	50.025 50.265	602 701	Question calls for witness to guess; the witness lacks personal knowledge.
<b>Unresponsive</b>	50.115(1)	611(a)	Answer includes testimony unrelated to the focus of the question.

### Authentication and Identification

“The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims.”  
(NRS 52.015/FRE 901(a))

<b>Example of Authentication/Identification</b>	<b>NRS</b>	<b>FRE</b>	<b>Explanation</b>
<b>Testimony of Witness with Knowledge</b>	52.025	901(b)(1)	Testimony that a matter is what it is claimed to be.
<b>Handwriting: Nonexpert Opinion</b>	52.035	901(b)(2)	Nonexpert opinion as to the genuineness of handwriting, based upon familiarity not acquired for purposes of the litigation
<b>Handwriting: Trier or Expert</b>	52.045	901(b)(3)	Comparison by the trier of fact or by expert witness with specimens which have been authenticated.
<b>Handwriting: Distinctive Characteristics</b>	52.055	901(b)(4)	Appearance, contents, substance, internal patterns or other distinctive characteristics, taken in conjunction with circumstances.
<b>Voice Identification</b>	52.065	901(b)(5)	A voice, whether heard firsthand or through mechanical or electronic transmission or recording, is sufficiently identified by opinion based upon hearing the voice at any time under circumstances connecting it with the alleged speaker.
<b>Telephone conversations</b>	52.075	901(b)(6)	A telephone conversation is sufficiently authenticated by evidence that a call was made to the number supplied by the telephone company for the person in question if: The call was to a place of business and the conversation related to business reasonably transacted over the telephone; or Circumstances, including self-identification, show the person answering to be the one called.
<b>Public Records and Reports</b>	52.085	901(b)(7)	Evidence that a writing authorized by law to be recorded or filed and in fact recorded or filed in a public office, or a purported public record, report, statement or data compilation, in any form, is from the public office where items of this nature are kept.
<b>Ancient Documents or Compilations of Data</b>	52.095	901(b)(8)	Evidence that a document or data compilation, in any form: Is in such condition as to create no suspicion concerning its authenticity; Was in a place where it, if authentic, would likely be; and Is at least 20 years old at the time it is offered.
<b>Process or System</b>	52.105	901(b)(9)	Evidence describing a process or system used to produce a result and showing that the result is accurate.

### Presumptions of Authenticity (Self-Authentication)

“Extrinsic evidence of authenticity as a condition precedent to admissibility is not required with respect to the following:” (FRE 902)

<b>Self-Authenticating Document</b>	<b>NRS</b>	<b>FRE</b>	<b>Explanation</b>
<b>Foreign Public Documents</b>	52.115	902(3)	A document purporting to be executed or attested in a person’s official capacity by a person authorized by the laws of a foreign country to make the execution or attestation, and accompanied by a final certification as to the genuineness or the signature and official position: of the executing or attesting person; or of any foreign official whose certificate of genuineness of signature and official position relates to the execution or attestation or is in a chain of certificates of genuineness of signature and official position relating to the execution or attestation. A final certification may be made by a secretary of embassy or legation, consul general, consul, vice consul or consular agent of the United States, or a diplomatic or consular official of the foreign country assigned or accredited to the United States. If reasonable opportunity has been given to all parties to investigate the authenticity and accuracy of an official document the court may, for good cause shown order that it be treated as presumptively authentic without final certification or permit it to be evidenced by an attested summary with or without final certification.
<b>Certified Copies of Public Records</b>	52.125	902(4)	A copy of an official record or report or entry therein, or of a document authorized by law to be recorded or filed and actually recorded or filed in a public office, including data compilations in any form, certified as correct by the custodian or other person authorized to make the certification. The term “official record” shall include fingerprint classification cards kept by law enforcement agencies.
<b>Official Publications</b>	52.135	902(5)	Books, pamphlets or other publications purporting to be issued by public authority.
<b>Newspapers and Periodicals</b>	52.145	902(6)	Printed materials purporting to be newspapers or periodicals.
<b>Trade Inscriptions and the Like</b>	52.155	902(7)	Inscriptions, signs, tags or labels purporting to have been affixed in the course of business and indicating ownership, control or origin.
<b>Acknowledged Documents</b>	52.165	902(8)	Documents accompanied by a certificate of acknowledgment of a notary public or officer authorized by law to take acknowledgments.

### **Subscribing Witness' Testimony Unnecessary**

“The testimony of a subscribing witness is not necessary to authenticate a writing unless required by the laws of the jurisdiction whose laws govern the validity of the writing.” (NRS 52.175, FRE 903)

## Hearsay Exceptions

Hearsay is a statement, other than one made by the declarant while testifying at trial or hearing offered in evidence to prove the truth of the matter asserted.

### ***Availability of Declarant Immaterial***

EXCEPTION	NRS	FRE	DESCRIPTION
<b>General Exception</b>	51.075		A statement is not excluded if its nature and the special circumstances under which it was made offer assurances of accuracy not likely to be enhanced by calling the declarant as a witness.
<b>Present Sense Impression</b>	51.085	803(1)	A statement describing or explaining an event or condition made while the declarant was perceiving the event or condition, or immediately thereafter.
<b>Excited Utterance</b>	51.095	803(2)	A statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition.
<b>Then Existing Mental, Emotional or Physical Condition</b>	51.105	803(3)	A statement of the declarant's then existing state of mind, emotion, sensation or physical condition (intent, plan, motive, design, mental feeling, pain, and bodily health), but <i>not</i> a statement of memory or belief to prove the fact remembered or believed unless it relates to the execution, revocation, identification or terms of declarant's will.
<b>Medical Diagnosis or Treatment</b>	51.115	803(4)	Statements made for purposes of medical diagnosis or treatment and describing medical history, or past or present symptoms, pain or sensations, or the inception or general character of the cause or external source thereof insofar as reasonably pertinent to diagnosis or treatment.
<b>Recorded Recollection</b>	51.125	803(5)	A memorandum or record concerning a matter about which a witness once had knowledge but now has insufficient recollection to enable the witness to testify fully and accurately, shown to have been made or adopted by the witness when the matter was fresh in the witness' memory and to reflect that knowledge correctly. <i>If admitted, the memorandum or record may be read into evidence but may not itself be received as an exhibit unless offered by an adverse party.</i>
<b>Regularly Conducted Activity</b>	51.135	803(6)	Information, in any form, of acts, events, conditions, opinions, or diagnoses, made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted activity, , all as shown by the testimony of the custodian or other qualified witness, or by certification, <i>unless the source of information or method or circumstances of preparation indicate lack of trustworthiness.</i>
<b>Absence of Entry of Records Kept in Accordance of Regularly Conducted Activity</b>	51.145	803(7)	Evidence that matter is not included in the information, in any form, of a regularly conducted activity, to prove the nonoccurrence or nonexistence of the matter, if the matter was of a kind of which that information was regularly made and preserved, <i>unless the sources of information or other circumstances indicate lack or trustworthiness.</i>
<b>Public Records and Reports</b>	51.155	803(8)	Records, reports, statements or data compilations, in any form, of public officials or agencies, setting forth (A) the activities of the official or agency, or (B) matters observed pursuant to duty imposed by law, or (C) in civil cases and proceedings, factual findings resulting from an investigation made pursuant to authority granted by law, <i>unless the sources of information or other circumstances indicate lack of trustworthiness.</i>

<b>Reports of Vital Statistics</b>	51.165	803(9)	Records or data compilations, in any form, of births, fetal deaths, deaths, or marriages if the report thereof was made to a public office pursuant to requirements of law.
<b>Absence of Public Record or Entry</b>	51.175	803(10)	To prove the absence of a record, report, statement, or data compilation, in any form, or the nonoccurrence or nonexistence of a matter of which a record, report, statement, or data compilation, in any form, was regularly made and preserved by a public officer, agency or official, evidence in the form of a certification, or testimony, that diligent search failed to disclose the record, report, statement, or data compilation, or entry.
<b>Records of Religious Organizations</b>	51.185	803(11)	Statements of births, marriages, divorces, deaths, legitimacy, ancestry, relationship by blood or marriage, or other similar facts of personal or family history, contained in a regularly kept record of a religious organization.
<b>Marriage, Baptismal, and Similar Certificates</b>	51.195	803(12)	Statements of fact contained in a certificate that the maker performed a marriage or other ceremony or administered a sacrament, made by a clergyman, public official, or other person authorized by the rules or practices of a religious organization or by law to perform the act or within a reasonable time thereafter.
<b>Family Records</b>	51.205	803(13)	Statements of fact contained in family Bibles, genealogies, charts, engravings on rings, inscriptions on family portraits or the like.
<b>Records of Documents Affecting an Interest in Property</b>	51.215	803(14)	The record of a document purporting to establish or affect an interest in property, as proof of the content of the original recorded document and its execution and delivery by each person by whom it purports to have been executed, if the record is a record of public office and an applicable statute authorizes the recording of documents of that kind in that office.
<b>Statements in Documents Affecting an Interest in Property</b>	51.225	803(15)	A statement contained in a document purporting to establish or affect an interest in property if the mater stated was relevant to the purpose of the document, unless dealings with the property since the document was made have been inconsistent with the truth of the statement or the purport of the document.
<b>Statement in Ancient Documents</b>	51.235	803(16)	Statements in a document in existence twenty years or more the authenticity of which is established.
<b>Market Reports, Commercial Publications</b>	51.245	803(17)	Market quotations, tabulations, lists, directories, or other published compilations, generally used and relied upon by the public or by persons in particular occupations.
<b>Learned Treatises</b>	51.255	803(18)	To the extent called to the attention of an expert witness upon cross or relied upon by the expert witness in direct, statements contained in published treatises, periodicals, or pamphlets on a subject of history, medicine, or other science or art, established as a reliable authority by the testimony or admission of the witness or by other expert testimony or by judicial notice.
<b>Reputation Concerning Personal or Family History</b>	51.265	803(19)	Reputation among members of a person's family by blood or marriage, or among a person's associates, or in the community, concerning a person's birth, marriage, divorce, death, legitimacy, relationship by blood, or marriage, ancestry, or other similar fact of personal or family history.
<b>Reputation Concerning Boundaries or General History</b>	51.275	803(20)	Reputation in a community, arising before the controversy, as to boundaries of or customs affecting lands in the community, and events of general history important to the community or State or nation in which the community is located
<b>Reputation as to Character</b>	51.285	803(21)	Reputation of a person's character among associates or in the community.

<b>Judgment of Previous Conviction</b>	51.295	803(22)	Evidence of a final judgment, entered after a trial or upon a plea of guilty (not <i>nolo contendere</i> ), adjudging a person guilty of a crime punishable by death or imprisonment in excess of one year, to prove any fact essential to sustain the judgment, but not including, when offered by the Government in a criminal prosecution for purposes other than impeachment, judgments against persons other than the accused. The pendency of an appeal may be shown but does not affect admissibility.
<b>Judgment as to Personal, Family, or General History, or Boundaries</b>	51.305	803(23)	Judgments as proof of matters of personal, family or general history, or boundaries, essential to the judgment, if the matters would be provable by evidence of reputation.

### ***Declarant Unavailable***

- Unavailability as a witness includes situations in which the declarant is:
  - Exempted by ruling of the court on the ground of privilege from testifying concerning the subject matter of the declarant’s statement; or
  - Persistent in refusing to testify despite an order of the court to do so; or
  - Unable to be present or to testify at the hearing because of death or then existing physical or mental illness or infirmity; or
  - Absent from the hearing and beyond the jurisdiction of the court to compel appearance and the proponent of the declarant’s statement has exercised reasonable diligence but has been unable to procure the declarant’s attendance or take the declarant’s deposition.
- A declarant is not “unavailable as a witness” if exemption, refusal, inability, or absence is due to the procurement or wrongdoing of the proponent of the declarant’s statement for the purpose of preventing the witness from attending or testifying. (NRS 51.055; FRE 804(a))

<b>EXCEPTION</b>	<b>NRS</b>	<b>FRE</b>	<b>DESCRIPTION</b>
<b>Former Testimony</b>	51.325	804(b)(1)	Testimony given as a witness at another hearing of the same or a different proceeding, or in a deposition taken in compliance with the law in the course of another proceeding, if the declarant is unavailable as a witness, and if the proceeding was different, the party against whom the former testimony is offered was a party or is in privity with one of the former parties and the issues are substantially the same.
<b>Statement Under Belief of Impending Death</b>	51.335	804(b)(2)	A statement made by a declarant while believing that the declarant’s death was imminent.
<b>Statement Against Interest</b>	51.345	804(b)(3)	A statement which was at the time of its making so far contrary to the declarant’s pecuniary or proprietary interest, or so far tended to subject the declarant to civil or criminal liability, or so far tended to render invalid a claim by the declarant against another, or so far tended to make the declarant an object of hatred, ridicule or social disapproval, that a reasonable person in the declarant’s position would not have made the statement unless believing it to be true. A statement tending to expose the declarant to criminal liability and offered to exculpate the accused is not admissible unless corroborating circumstances clearly indicate the trustworthiness or the statement.

<b>Statement of Personal or Family History</b>	51.355	804(b)(4)	A statement concerning the declarant's own birth, marriage, divorce, legitimacy, relationship by blood or marriage, ancestry or other similar fact of personal or family history, even though declarant had no means of acquiring personal knowledge of the matter stated; or A statement concerning the foregoing matters, and death also, of another person, if the declarant was related to the other by blood, adoption, or marriage or was so intimately associated with the other's family as to be likely to have accurate information concerning the matter declared.
<b>Unavailability or Inability of Child to Testify</b>	51.385		A statement made by a child under the age of 10 years describing any act of sexual conduct performed with or on the child or any act of physical abuse of the child is admissible in a criminal proceeding regarding that act if the court finds that the time, content and circumstances of the statement provide sufficient circumstantial guarantees of trustworthiness and the child testifies or is unavailable or unable to testify. The Court shall consider specific factors to determine trustworthiness.

## COMMON TRIAL OBJECTIONS

### A. Opening Statement

1. Arguing the law
2. Discussing inadmissible facts
3. Misstatements of the law
4. Expressing personal belief on the merits

### B. Witness Qualifications

1. Competency to testify (prior to swearing in witness)
2. Privilege
3. Non-qualified expert

### C. Objections During Direct Exam

1. Leading
2. Not relevant
3. Hearsay
4. Calls for Speculation
5. Calls for a narrative answer
6. Asked and answered
7. Cumulative
8. Prejudicial effect outweighs probative value
9. Assumes facts not in evidence
10. Lack of personal knowledge (no foundation)
11. Misstatement of the record (misquoting the witness)
12. No proper foundation (specify missing elements)

### D. Objection During Cross Examination

1. Beyond the scope of direct
2. Hearsay
3. Asked and answered
4. Assumes facts not in evidence
5. Compound question
6. Misstatement of the record (misquoting the witness)
7. Argumentative
8. Improper impeachment
9. No good faith basis of the question

### E. Documents

1. Identification
2. Authentication
3. Relevancy
4. Best evidence
5. Hearsay
6. Privilege

### F. Closing Argument

1. Improper argument- facts not in evidence
2. Improper argument- Misstatement of the facts
3. Improper argument- Misstatement of the law
4. Stating personal belief in the merits of the case
5. Asking jurors to place themselves in the party's position
6. Deals with improper subject matter- settlement discussions, insurance right to remain silent, etc.
7. Unduly prejudicial/inflammatory

### G. Jury Instructions

1. Misstating the facts of the case
2. Misstatement of the law
3. Unduly placing weight on certain legal issues of evidence
4. Failing to give instructions consistent with theory of the case
5. Failing to give requested instructions
6. Confusing/ambiguous

# CROSS EXAMINATION METHODS

Presented for 2022 CLE by the Sea Conference

July 7<sup>th</sup> to July 10<sup>th</sup>, 2022

## Cross Examination Outline:

- A. Three Rules of Cross-Examination:
  - 1. Leading questions only
  - 2. One new fact per question
  - 3. Questions follow a logical progression
- B. Rule 1: Leading Questions Only
  - 1. Be the teacher
  - 2. Word selection
  - 3. Tone, timing & emphasis
- C. Rule 2: One New Fact Per Question
  - 1. Teaches the witness to answer "yes"
  - 2. Court learns your case this way too
  - 3. Solves problems:
    - i. No objection
    - ii. Certainty as to answer
    - iii. Easier impeachment
    - iv. Better Court comprehension
- D. Rule 3: Questions Follow A Logical Progression
  - 1. Break cross-examination into a series of logical progressions to each specific goal.
  - 2. These series are called Chapters.
- E. Chapters
  - 1. A group of leading questions
  - 2. Progressing in a logical sequence
  - 3. Starting generally

4. Becoming increasingly specific
  5. Establishing a factual goal (finish the picture)
- F. Chapter Method
1. Group of related facts
  2. Use leading questions
  3. Grouping establishes the goal
    - i. Build your theory or hurt their theory
    - ii. Leading to a belief about credibility
- G. Draft Chapters backwards:
1. Identify any one single factual goal to be achieved in the course of the cross-examination that is congruent with a theory of the case
  2. Review cross-examination preparation materials for all facts that lead toward acceptance of that single factual goal
  3. Draft a single Chapter that covers those facts, leading to the factual goal set out
- H. Three Categories of Chapters:
1. Undermine, hurt, or destroy opponent's theory
  2. Support, assist, and verify your theory
  3. Contrast the two theories
- I. Constructive vs. Destructive Cross-Examination

# Albert Einstein's five ascending level of Intellect

