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Family Law News

this issue....

STATE BAR OF ARIZONA

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FROM THE CHAIR

ANNIE M. ROLFE

I AM SURE YOU ARE AWARE, THE ARIZONA SUPREME COURT approved the proposed changes to the Arizona Rules of Family Law Procedure and the new rules go into effect on January 1st, 2019. You can find the new rules online here.

I was happily surprised to find that the rules include a correlation table that ties the new family law rule numbers to the former family law rule numbers as well as the current civil rule numbers. This should help expedite updating our forms (for example, Rule 23.1 (Improper Venue) is now Rule 21, but it otherwise appears substantively the same).

While I am still in the midst of reviewing the new rules, the following are some substantive changes I have noticed that will affect my practice (and maybe yours):

- There are now separate rules for Motions for Reconsideration and Motions for Clarification. Motions for Reconsideration are now addressed in Rule 35.1. Motions for Clarification remain in Rule 84.
  - The new Rule 35.1 is much less restrictive than Rule 84. There is no filing deadline (formerly 30 days), and there are no required grounds upon which a Motion for Reconsideration must be filed.
- Rule 69(b) now includes language that an agreement pursuant to Rule 69 is not binding upon the court until the agreement is submitted to and approved by the court. Former 69(b) is now 69(c).
- Rule 47(c) now requires the trial court to set a resolution management conference upon receiving a motion for temporary orders and before setting an evidentiary hearing. Previously, the court could choose to set a resolution management conference, a pretrial conference, or an evidentiary hearing. That choice appears to have been eliminated, *except* that Rule 47(c)(1) allows for the court to set a motion for temporary orders for an evidentiary hearing if "the circumstances

...THE RULES INCLUDE A CORRELATION TABLE THAT TIES THE NEW FAMILY LAW RULE NUMBERS TO THE FORMER FAMILY LAW RULE NUMBERS...

of a specific case demonstrate that a resolution management conference would not serve the interests of efficiency."

- The deadline to file a motion for summary judgment (Rule 79) increased from 60 days before trial to 90 days before trial.
- A post-decree petition to modify or enforce a judgment must be served at least 20 days before hearing, pursuant to the new Rule 91(j).
- Before an evidentiary hearing on a post decree petition, each party must file a Rule 76.1 statement (similar to a pretrial statement).
- The presiding family law judge no longer has to approve petitions for modification of legal decision-making.
- The rules regarding judgments have some significant changes. Review new rule 78.
    - Rule 78(b) states: "If there is no such express determination and recital [to enter final judgment as to one or more, but fewer than all, claims or parties], any decision, however designated, that adjudicates fewer than all the claims or the rights and liabilities of fewer than all of the parties does not end the action ... and is subject to revision at any time before entry of a judgment adjudicating all claims..."
    - Rule 78(c) states: "A judgment as to all claims, issues, ad parties is not final unless the judgment recites no further matters remain pending and that the judgment is entered under Rule 78(c)." FL

GOOD LUCK!

ABOUT THE AUTHOR

Annie Rolfe has been practicing family law for nearly fifteen years. She is a Certified Specialist in Family Law and the Chair of the Family Law Executive Council of the State Bar of Arizona. Annie received her undergraduate degree from Yale University and her law degree from the James E. Rogers College of Law. Annie is mother to three amazing girls and wife to a lucky and tolerant husband.

Calculation Engagement v. Valuation Engagement in a Marital Dissolution Context

BY JUSTIN NIELSEN

Within a marital dissolution context, attorneys hired by each party (i.e., husband and wife) will many times require a valuation analyst to assist with certain property settlement aspects associated with the divorce. Namely, the valuation analyst will be retained to assist in estimating an independent value of certain marital property, such as a closely held business ownership interest that is included in the marital estate. These family law attorneys have the option of retaining a valuation analyst on either a (1) calculation engagement or (2) valuation engagement. This discussion highlights the distinct differences between a calculation engagement and

a valuation engagement within a marital dissolution context and includes a brief discussion of when each engagement might be most appropriate, along with a discussion of certain business valuation standards and requirements associated with each engagement.

INTRODUCTION

Over the last several decades, Americans have been getting divorced at an increasing rate. Within these increasing marital dissolutions, both husband and wife are typically represented by attorneys ("legal counsel"). Similarly, legal counsel have increased their reliance on valuation analysts in order to assist with certain property settlement aspects associated with the marital dissolution. Namely, to assist with independently estimating the value of certain marital property, or more specifically, to assist with independently estimating the value of certain closely held business ownership interests that are included in the marital estate.

Over the last several decades, Americans have been getting divorced at an increasing rate... legal counsel have increased their reliance on valuation analysts in order to assist with certain property settlement aspects associated with the marital dissolution.

According to the American Institute of Certified Public Accountants Statement on Standards for Valuation Services No. 1, *Valuation of a Business, Business Ownership Interest, Security, or Intangible Asset* ("SSVS"), there are two types of engagements to estimate value: (1) a valuation engagement; and (2) a calculation engagement.[1]

Generally, these are the two types of engagements for which a valuation analyst would be retained within a marital dissolution context.

According to SSVS, a calculation engagement is performed when (1) the valuation analyst and the client (*i.e.,* legal counsel) [2] agree in writing on the specific valuation approaches and methods the valuation analyst will use in calculating the value of the closely held business ownership interest(s) and (2) the valuation analyst calculates the value of the closely held business ownership interest(s) according to the written agreement.

Further, according to SSVS, a valuation engagement is performed when (1) the engagement letter specifically requires the valuation analyst to estimate the value of the closely held business ownership interest(s) and (2) the valuation analyst estimates the value of the closely held business ownership interest(s) and is not required to select certain valuation approaches (*i.e.,* the valuation analyst is permitted to apply the valuation approaches and methods he or she feels is most appropriate for the engagement).

CALCULATION ENGAGEMENT V. VALUATION ENGAGEMENT

When a valuation analyst is retained by legal counsel to provide services in a marital dissolution context, typically the valuation analyst is retained through what is termed an "engagement to estimate value." While many times a valuation analyst may be retained to provide other services, such as general consulting or forensic accounting services within a marital dissolution context, this discussion will focus on the situation where a valuation analyst is retained to estimate the valuate of a closely held business ownership interest (within the marital community).

SSVS provides guidance to the business valuation industry with regard to the types of services and more specifically, the types of engagements and reports, that the valuation analyst may provide in a marital dissolution context (as well as in other contexts). It is important for the valuation analyst to adhere to relevant business valuation standards and procedures when being retained to estimate the value of a closely held business ownership interest in a marital dissolution context.

As presented in SSVS:

> **Engagement to estimate value.** An engagement, or any part of an engagement (for example, a tax, litigation, or acquisition-related engagement), that involves determining the value of a business, business ownership interest, security, or intangible asset. Also known as *valuation service*.[3]

Once it is determined that the valuation analyst will be formally retained by legal counsel through an engagement to estimate value, the type of engagement must then be determined (as required by SSVS). As presented in SSVS:

> There are two types of engagements to estimate value — a **valuation engagement** and a **calculation engagement**. The valuation engagement requires more procedures than does the calculation engagement. The valuation engagement results in a conclusion of value. The calculation engagement results in a calculated value. The type of engagement is established in the understanding with the client (see paragraphs .16 and .17):
>
> a. ***Valuation engagement.*** A valuation analyst performs a valuation engagement when (1) the engagement calls for the valuation analyst to estimate the value of a subject interest and (2) the valuation analyst estimates the value (as outlined in paragraphs .23-.45) and is free to apply the valuation approaches and methods he or she deems appropriate in the circumstances. The valuation analyst expresses the results of the valuation as a conclusion of value; the conclusion may be either a single amount or a range.
>
> b. ***Calculation engagement***. A valuation analyst performs a calculation engagement when (1) the valuation analyst and the client agree on the valuation approaches and methods the valuation analyst will use and the extent of procedures the valuation analyst will perform in the process of calculating the value of a subject interest (these procedures will be more limited than those of a valuation engagement) and (2) the valuation analyst calculates the value in compliance with the agreement. The valuation analyst expresses the results of these procedures as a calculated value. The calculated value is expressed as a range or as a single amount. A calculation engagement does not include all of the procedures required for a valuation engagement (see paragraph .46). [4]

Is a Calculation Engagement or Valuation Engagement More Appropriate?

Determining which level of service, *i.e.*, which engagement, is most appropriate to help estimate the value of a closely held business ownership interest in a marital dissolution context can be problematic. It is important that the valuation analyst consider the circumstances surrounding each potential engagement, and discuss with legal counsel what the ultimate goal, result, and audience will be for the engagement.

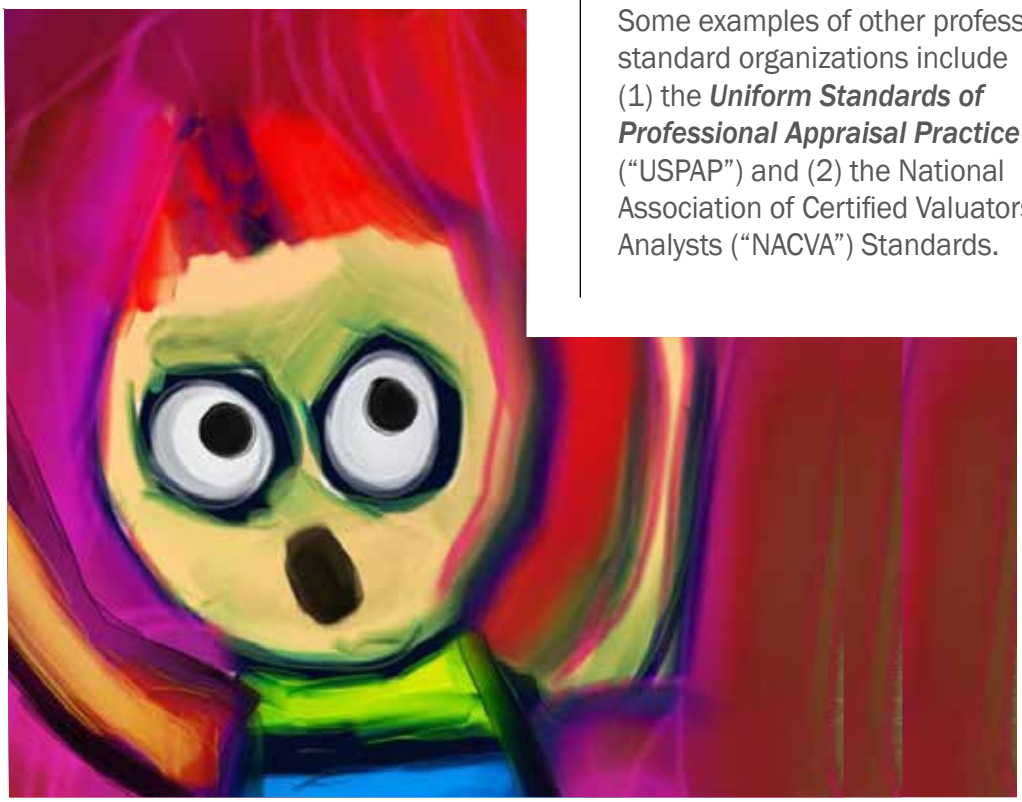
A few examples may be helpful in understanding when a calculation engagement or a valuation engagement may be most appropriate. First, assume that the purpose of the valuation is to assist with preliminary management planning associated with the potential sale of the closely held business ownership interest. In this circumstance, a calculation engagement is likely appropriate and acceptable as the goal is to estimate the value of the closely held business ownership interest in order to obtain an idea of what a hypothetical willing buyer might pay for said interest. The hypothetical willing buyer would likely perform their own due diligence and analysis in order to estimate what they might pay for the closely held business ownership interest as well. Therefore, the result of the calculation engagement may be used as an initial negotiating tool in the up-front discussions with the hypothetical, willing buyer. While updating the calculation engagement to a valuation engagement (once an agreement to sell has been finalized) may be appropriate, a calculation

engagement can be a suitable and cost-effective option to a valuation engagement when the purpose is for general management planning purposes.

In the second example, the individual with the same closely held business ownership interest is involved in a marital dissolution. Further, it is assumed that the marital dissolution will require a division of the relevant marital assets. One of the more significant assets in the marital community is the closely held business ownership interest and, therefore, a value needs to be estimated in order to equitably divide the closely held business ownership interest between the parties. If the marital dissolution is in its early stages, then a calculation engagement may be appropriate in order to assist with mediation or settlement. However, it is important for the valuation analyst to consider that in proceedings that may end up in a court of law (such as in a marital dissolution), the selected engagement should ultimately adhere to the standards of a valuation engagement, allowing the valuation analyst to opine on an estimated ***conclusion of value.*** As mentioned above, a calculation engagement results in a calculated value, not a ***conclusion of value,*** which provides the valuation analyst's direct opinion or conclusion.

In fact, SSVS explicitly states that in a calculation engagement, the valuation analyst should disclose that the calculation engagement does not include all the procedures required of a valuation engagement. Further, SSVS requires the valuation analyst to state that if a valuation engagement had been performed, then the resulting indications of value may have been different. [5] Due to this difference, among others, many valuation analysts will not testify in a court of law without having completed a valuation engagement that results in a conclusion of value, which represents the valuation analyst's professional opinion or conclusion.

This is not to say that each marital dissolution engagement should be a valuation engagement. A calculation engagement may be appropriate for purposes of mediating a settlement outside a court of law, or for non-mediation settlement purposes. Rather, before entering into a formal engagement, the valuation analyst should reasonably consider the goal, result, and audience in order to determine which engagement would be most appropriate within a marital dissolution context.



Applicable Standards for a Valuation Engagement or a Calculation Engagement

As mentioned, SSVS is one professional standard organization that provides practitioner guidance to the business valuation industry. While SSVS is developed and published by the American Institute of Certified Public Accountants ("AICPA"), it provides relevant guidance to all business valuation practitioners (not just certified public accountants). This is because while different organizations have different business valuation standards, there is a relative commonality to the relevant business valuation standards and procedures within each organization that can assist the valuation analyst in performing assignments properly.
Some examples of other professional standard organizations include (1) the ***Uniform Standards of Professional Appraisal Practice*** ("USPAP") and (2) the National Association of Certified Valuators and Analysts ("NACVA") Standards.

For example, if the valuation analyst agrees with legal counsel to enter into a valuation engagement, the following professional standards from the AICPA, USPAP, and NACVA specific to the valuation engagement may apply:

- **NACVA Professional Standards II General and Ethical** Standards; Standard III Scope of Services (B)(1) Valuation Engagement; Standard IV Development Standards; and Standard V Reporting Standards (C)(1) Contents of Report for detailed reports and (C)(2) Contents of Report for summary reports
- **SSVS No. 1 0.21(a), .23 through .45 for valuation** engagements, .48 (a) and (b), .51 through .70 for detailed valuation engagement reports; .71 and .72 for summary valuation engagement reports
- **USPAP Standard 9 Business Appraisal, Development and** Standard 10 Business Appraisal Reporting; specifically, Standard 10-2(a) for a detailed report and Standard 10-2(b) for a summary/restricted report

Alternatively, if the valuation analyst agrees with legal counsel to enter into a calculation engagement, the following professional standards from the AICPA and NACVA specific to the calculation engagement may apply:

- **NACVA Professional Standards II General and Ethical Standards;** Standard III Scope of Services (B)(2) Calculation Engagement; Standard IV Development Standards; and Standard V Reporting Standards (C)(3) Contents of Report for calculation reports
- **SSVS No. 1 0.21(b), .46 for calculation engagements, .48(c),** .73 through .77 for calculation reports

Please note that USPAP does not have an alternative to a valuation engagement, such as a calculation engagement as referenced in SSVS and NACVA professional standards. If a valuation analyst is required to follow USPAP in performing an appraisal, then the valuation analyst must follow all applicable USPAP standards for a full appraisal (*i.e.*, there is no calculation engagement or calculation report option).

Regardless of which professional standard organization the valuation analyst selects to adhere to, the valuation analyst should ensure that each segment of the appraisal is compliant with all applicable professional standards of the selected professional standard organization.

Regardless of which professional standard organization the valuation analyst selects to adhere to, the valuation analyst should ensure that each segment of the appraisal is compliant with all applicable professional standards of the selected professional standard organization.

CALCULATION REPORT V. VALUATION REPORT

Once the appropriate type of engagement (*i.e.*, a calculation engagement or a valuation engagement) is determined, the valuation analyst must then construct a report commensurate with the selected engagement.

If the valuation analyst is required to produce a valuation report (as a result of being retained on a valuation engagement), it is important for the valuation analyst to follow applicable professional standards in completing the valuation report.

The AICPA (and specifically, SSVS), among other professional standard organizations (including the professional standard organizations presented above), provides guidance with regard to the content and presentation of a valuation report. It is important to note that SSVS provides two options with regard to a valuation report: (1) a valuation engagement, detailed report; and (2) a valuation engagement, summary report. For purposes of this discussion, we present only the structure of a valuation engagement, detailed report.[6] As presented in SSVS:

> The *detailed report* is structured to provide sufficient information to permit intended users to understand the data, and analyses underlying the valuation analyst's conclusion

of value. A detailed report should include, as applicable, the following sections titled using wording similar in content to that shown:

- Letter of transmittal
- Table of contents
- Introduction
- Sources of information
- Analysis of the subject entity and related nonfinancial information
- Financial statement or financial information analysis
- Valuation approaches and methods used
- Valuation adjustments
- Nonoperating assets, nonoperating liabilities, and excess or deficient operating assets (if any)
- Representation of the valuation analyst
- Reconciliation of estimates and conclusion of value
- Qualifications of the valuation analyst
- Appendixes and exhibits

The report sections previously listed and the detailed information within the sections described in the following paragraphs .52-.77 may be positioned in the body of the report or elsewhere in the report at the direction of the valuation analyst. [7]

If the valuation analyst is required to produce a calculation report (as a result of being retained on a calculation engagement), as mentioned above, it is important for the valuation analyst to follow applicable professional standards in completing the calculation report.

SSVS also provides guidance with regard to the content and presentation of a calculation report. As presented in SSVS:

> As indicated in paragraph .48, a calculation report is the only report that should be used to report the results of a calculation engagement. The report should state that it is a calculation report. The calculation report should include the representation of the valuation analyst similar to that in paragraph .65, but adapted for a calculation engagement. [8]

More specifically, SSVS presents a checklist of what should be included in a calculation report. As presented in SSVS:

> The calculation report should include a section summarizing the calculated value. This section should include the following (or similar) statements:

a. Certain calculation procedures were performed; include the identity of the subject interest and the calculation date.
b. Describe the calculation procedures and the scope of work performed or reference the section(s) of the calculation report in which the calculation procedures and scope of work are described.
c. Describe the purpose of the calculation procedures, including that the calculation procedures were performed solely for that purpose and that the resulting calculated value should not be used for any other purpose or by any other party for any purpose.
d. The calculation engagement was conducted in accordance with the Statement on Standards for Valuation Services of the American Institute of Certified Public Accountants.
e. A description of the business interest's characteristics, including whether the subject interest exhibits control characteristics, and a statement about the marketability of the subject interest.
f. The estimate of value resulting from a calculation is expressed as a calculated value.

g. A general description of a calculation engagement is given, including that
   i. a calculation engagement does not include all of the procedures required for a valuation engagement, and
   ii. had a valuation engagement been performed, the results may have been different.
h. The calculated value, either a single amount or a range, is described.
i. The report is signed in the name of the valuation analyst or the valuation analyst's firm.
j. The date of the valuation report is given.
k. The valuation analyst has no obligation to update the report or the calculation of value for information that comes to his or her attention after the date of the report. [9]

It is important to note that the above professional standard guidance is only a brief summary of some of the standards presented in SSVS. It is the responsibility of the valuation analyst to ensure that the presentation of the estimated value indications, as a result of completing a calculation engagement or valuation engagement, adhere to all relevant standards as presented in SSVS (or adhere to all relevant standards as proffered by USPAP and the NACVA).

SUMMARY AND CONCLUSION

Over the last several decades, legal counsel have increased their reliance on valuation analysts in order to assist with certain property settlement aspects associated with marital dissolutions. Namely, family law legal counsel have increased their reliance on valuation analysts in order to assist with estimating the value of certain closely held business ownership interests that are included in the marital estate.

In assisting legal counsel, the valuation analyst must decide (in conjunction with legal counsel) whether the engagement should be a calculation engagement or a valuation engagement. The AICPA, and specifically SSVS, among other business valuation-related professional organizations, provides professional standard guidance with regard to the structure and requirements of a calculation report or a valuation report. However, regardless of the selected professional organization standards for which the valuation analyst will rely on in completing the engagement, it is important to consider the goal, result, and audience for each engagement when determining whether a calculation engagement or a valuation engagement is most appropriate within a marital dissolution context. FL

Justin Nielsen is a vice president in the Portland, Oregon, office of Willamette Management Associates. Willamette Management Associates, founded in 1969, provides thought leadership in business valuation, forensic analysis, and financial opinion services to clients worldwide. As vice president, Justin provides valuation and economic analysis services for marital dissolution, dissenting shareholder (or shareholder oppression), gift and estate tax, employer stock option (ESOP), lost profits/damages, and merger and acquisition purposes. Justin has testified on numerous occasions in arbitration forums related to securities damages, and he holds an MBA from the University of New Mexico and has earned the Certified Valuation Analyst designation from the National Association of Certified Valuators and Analysts. For more information, please visit www.willamette.com.

"SI VIS PACEM, PARA BELLUM"

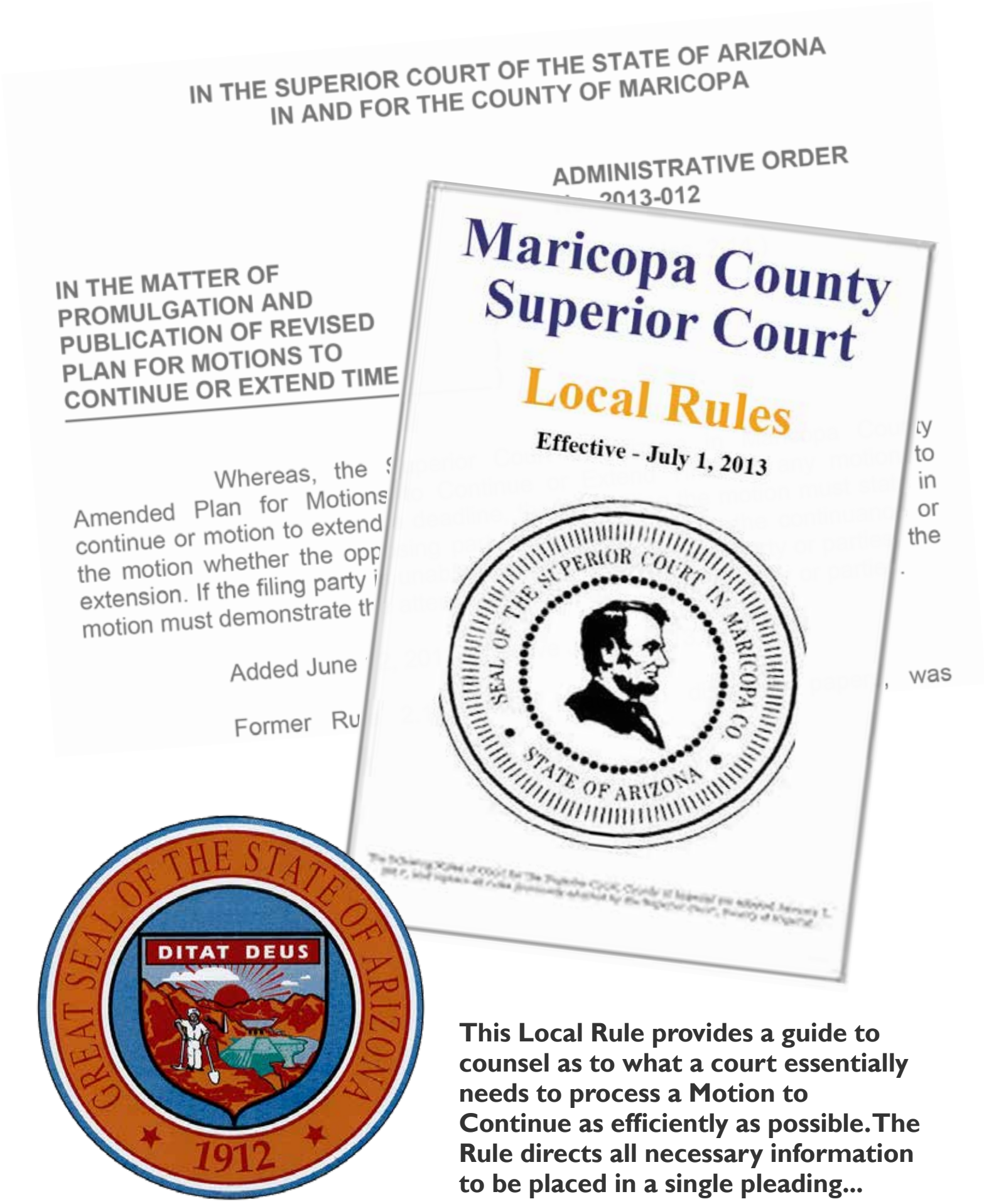
Maricopa County Superior Court Local Rule 2.14. Motions to Continue or Extend Time

In any motion to continue or motion to extend a deadline, the party filing the motion must state in the motion whether the opposing party or parties object to the continuance or extension. If the filing party is unable to contact the opposing party or parties, the motion must demonstrate the attempt to contact the opposing party or parties.
(17C A.R.S. Super.Ct.Local Prac.Rules, Maricopa County, Rule 2.14. Emphasis add.)

text by
Hon. Lisa VandenBerg,
Maricopa County
Superior Court Judge

This Local Rule provides a guide to counsel as to what a court essentially needs to process a Motion to Continue as efficiently as possible. The Rule directs all necessary information to be placed in a single pleading so that the judicial officer may assess procedurally how to handle the Motion immediately upon reading. In other words, regardless of the timing of the Motion in comparison to trial, the judge's staff can immediately provide

In other words, regardless of the timing of the Motion in comparison to trial, the judge's staff can immediately provide the pleading to the judge upon its arrival for immediate ruling.



This Local Rule provides a guide to counsel as to what a court essentially needs to process a Motion to Continue as efficiently as possible. The Rule directs all necessary information to be placed in a single pleading...

the pleading to the judge upon its arrival for immediate ruling. On the other hand, if the Motion is delivered to the court's division without opposing counsel's position, then the court is faced with a Hobson's Choice as to whether to reject the Motion for non-compliance with this Local Rule or lodge the Motion for a response. Either way, the court misses an opportunity to efficiently resolve the Motion and forfeits the ability to immediately start planning to use that time on the calendar for other matters, if the Motion was going to be granted.

I have had the pleasure of serving on the Maricopa County Superior Court bench for the last thirteen years, but am still new to my role as a Judge on Family Court. In my first six months, I found managing the sheer volume of paper flow and assigned cases to be daunting. A motion to continue or extend time seems like it should have been a welcomed pleading, but due to the common omission of the information that Local Rule 2.14 requires, the exact opposite was true ... as it became just another pleading that either was to be tickled to be looked at *again* on another date, or a minute entry rejection request for a motion that would likely be refiled for review *again* on a later date.

A motion to continue or extend time seems like it should have been a welcomed pleading, but due to the common omission of the information that Local Rule 2.14 requires, the exact opposite was true …

Prior to coming to the bench, I was a Maricopa County prosecutor for a time and appreciate the difficulty in managing high volume caseloads, and in catching opposing counsel so that a motion to continue can be discussed. But as the title of this *brief* article points out – the best way to provide your client and you peace (*i.e.* the desired outcome) is by taking these steps regarding their war (*i.e.* the trial or hearing or deadline at issue). At the risk of sounding a bit too Pollyanna, I would argue that in complying with this Local Rule you have better served your client (as you should receive an answer on the Motion quickly) and served the Family Court community in two ways: 1) you have freed the judge and his/her staff from unnecessary procedure and delay and 2) even that momentary contact with opposing counsel can help a great deal as a simple reminder for both counsel that while each has a duty to their client as family law litigators, counsel are also part of a legal community that is working toward one common goal- justice. FL

– the best way to provide your client and you peace (i.e. the desired outcome) is by taking these steps regarding their war (i.e. the trial or hearing or deadline at issue). At the risk sounding a bit too Pollyanna, I would argue that in complying with this Local Rule you have better served your client (as you should receive an answer on the Motion quickly) and served the Family Court community...

THERAPY

RECENT COURT OF APPEALS CASES MAY HAVE A SIGNIFICANT IMPACT ON JUDICIAL DECISIONS IN THE FAMILY COURT AND MAY RESULT IN A DIFFERENT APPROACH TO COURT INVOLVEMENT IN LEGAL DECISION-MAKING.

BY
DAVID WEINSTOCK
PHD, JD

THE AFTERMATH OF NICAISE AND PAUL E - CAN THE COURT REQUIRE THERAPEUTIC REMEDIES?

Recent Court of Appeals cases may have a significant impact on judicial decisions in the Family Court and may result in a different approach to Court involvement in legal decision-making. It also appears that there may be an impact on the relationship and scope of intervention between the courts and therapists involved with parents and their children. As of the writing of this article, the Arizona Supreme Court has accepted review of *Nicaise*, and there is a pending request for review of *Paul E.* This article will focus on the potential therapeutic impact of the decisions.

It... appears that there may be an impact on the relationship and scope of intervention between the courts and therapists involved with parents and their children.

Evaluations vs. Therapy:

The *Nicaise* and *Paul E.* cases, as well as this article, do not address Court appointments for mental health professionals who serve in evaluative capacities, such as performing child custody evaluations. That area of law is settled by the *Lavit* decision, which clearly allows the court appointment of the mental health professionals for that purpose and confers quasi-judicial immunity for those evaluators who are assisting the trier of fact with judicial functions. The recent cases raise questions about treatment. [1]


please
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therapy session in progress
THANK YOU!

The Therapeutic Intervention Debate

WHEN DISCUSSING TREATMENT related to family court, it is important to distinguish between "Therapeutic Intervention (TI)" and court-ordered therapy. Generally, "Therapeutic Intervention" involves cases when a mental health provider is appointed to assist the Court in with an intervention for a family involved with the court.

All appointments are typically related to concerns about whether the child's best interests are being met and whether individual or family change will benefit the child's best interests.

Typically, the TI is appointed to create change in cases involving issues such as an unfit parent, parent-child reunification, poor co-parenting, child behavior issues, etc. All appointments are typically related to concerns about whether the child's best interests are being met and whether individual or family change will benefit the child's best interests. Importantly, as the TI is appointed to assist the trier of fact, the professional considers the Court to be the primary client. The TI is expected to provide periodic updates to the Court and seek to achieve goals in line with Court concerns. *Paul E.* creates significant questions about the Court's authority to appoint therapists as well as questions about immunity for such therapists. Depending on how the case is ultimately settled, the Court may ultimately have to reconsider if and how a professional can be appointed to administer therapy.

The TI is expected to provide periodic updates to the Court and seek to achieve goals in line with Court concerns.

Unlike TI appointments, some providers assist the family or individuals within the family when the Court orders families to participate in services. In such cases, the Court does not appoint the provider to work for the Court. While many of the processes will be similar to a TI process, the professional is a private practitioner working primarily for the family or an individual family member. The order speaks to the expectations for the litigant, while the practitioner is simply acting privately with obligations to the client and the practitioner's license. In such cases, the professional presumably does not have a relationship with the Court and has a relationship only with the client(s).

Court-appointed professionals may receive a request from family members for records, but if the Court appoints the professional, the records likely belong to the client, i.e. the Court. As such, the professional presumably needs permission from the Court to release records to the parent making the request.

The distinction between the two roles is very important as many professionals become confused with his/her role. For example, non-appointed professionals may seek to communicate to the Court because the family is involved in Court proceedings, but it begs the question as to whether the professional has standing to do so. Court-appointed professionals may receive a request from family members for records, but if the Court appoints the professional, the records likely belong to the client, i.e. the Court. As such, the professional presumably needs permission from the Court to release records to the parent making the request.

The distinction between the two roles is very important as many professionals become confused with his/her role.

Understanding the differences between the two roles is essential for all involved professionals from both legal and professional practice perspectives.

Ordering Treatment:

Based on the recent cases, there are questions regarding whether the Court has the statutory authority to appoint treating professionals to work for the Court. The Court clearly may appoint professionals under A.R.S. § 25-405 and § 25-406 for the purpose of the mental health professional providing evaluations and advice relevant to determination/modification of parenting time and/or legal decision-making. This expert advice-rendering role is also recognized by Rules 702 and 706 of the Arizona Rules of Evidence. For the purposes of this article, while it is recognized that there are great advantages for the professional to work directly for the Court, assessment of applicable statutory authority is outside the scope of this article.

With regard to ordering therapy, there are similar questions as to basis for the Court's authority to order family court participants to participate in treatment with a particular professional.

Statutory Basis for Ordering Therapy:

Current Arizona statutes permit the Court to order therapy in a variety of ways. Importantly, the below references are only examples of when a Court can order therapy in family court situations. Certainly, there may be others not discussed here. Further, identification of these statutes is not intended as an endorsement or opinion regarding the statutes.

There is clear statutory support for the Court to order treatment when the parenting plan is not being followed (e.g., reunification situations). A.R.S. § 25-414 A.4. states the Court may "order family counseling at the violating parent's expense," if the Court finds a parent is violating the parenting plan. However, the statute does not address who makes the decision regarding retention of a particular therapist – i.e., does the judge make that decision or is it the role of the judge to determine which parent will select the therapist?

However, the statute does not address who makes the decision regarding retention of a particular therapist

In domestic violence/child abuse situations, per A.R.S. § 25-403.03, the Court also has the power to order therapy. Specifically, the statute identifies, for example, "the Court may... Order the parent who committed the act of domestic violence to attend and complete, to the Court's satisfaction, a program of intervention for perpetrators of domestic violence and any other counseling the Court orders." A.R.S. § 25-403.03 references a number of specific individual acts of domestic violence in A.R.S. § 13-3601 that are periodically seen within family court cases. Some of the referenced provisions include more obvious domestic violence situations that may arise in a family court proceeding. Among the more obvious forms of domestic violence situations that frequently arise in a family court proceedings are endangerment (A.R.S. § 13-1201), threats and intimidation (A.R.S. § 13-1202), assault (A.R.S. § 13-1203), custodial interference (A.R.S. § 13-1302), criminal trespass (A.R.S. § 13-1502), criminal damage (A.R.S. § 13-1602), preventing the use of a telephone (A.R.S. § 13-2915), stalking (A.R.S. § 13-2923),

There is clear statutory support for the Court to order treatment when the parenting plan is not being followed (e.g., reunification situations).

and surreptitious photographing and videotaping (A.R.S. § 13-3019). However, among other statutes that A.R.S. § 13-3601 references are more general behavioral examples that constitute domestic violence. Areas of domestic violence not typically recognized as such by many professionals are disobeying Court orders [2] and harassment. [3] Based on the general definitions of domestic violence, arguably if a parent disobeys a lawful Court order or harasses the other parent, the Court may order the individual to attend therapy. However, once again, the statute does not provide direction concerning who decides on a therapist and course of treatment – i.e., the offender, the judge or the other party.

Ensuring Standardized Interventions:

Decades ago, insurance companies allowed unrestrained treatment from mental health professionals. At some point, insurance companies realized mental health intervention was costly, and there was little accountability for the providers to evidence positive change. Insurance companies subsequently created restrictions for mental health professionals to ensure that only the most productive treatments were paid for. In some ways, courts have played the same role, and similar to what happened with insurance companies the Court system is seeking accountability.

An examination of recent Court of Appeals decisions encourages this community to step back and consider what message the judiciary is sending. The system seems to be questioning the involvement of professionals for a variety of reasons, including a focus on parental rights and a lack of evidence regarding the usefulness of these interventions. Too often litigants/citizens complain about the costs of treatment in which they

are ordered to participate because of a lack of a coordinated and transparent process. With clearer expectations for mental health professionals, the judiciary and litigants will likely see the benefit to Court-ordered treatment with a minimization of the impact on parental rights.

1. PERIODIC TREATMENT PLANS: [4]

CURRENT STANDARD APPOINTMENT orders typically require 90-day status updates. These should include at the very least 1) identification of participation (how many sessions and who participated), 2) current treatment goals and 3) progress toward those goals. Too often providers are not transparent and do not submit clear treatment plans to the Court or litigants. This often leads participants to question what the mental health provider is doing behind the cloak of the therapy office door.

Too often providers are not transparent and do not submit clear treatment plans to the Court or litigants.

While there is a balance to be met between transparency and some level of client confidentiality to allow for a more effective therapeutic process, the balance can be met without a wall between the therapist and the Court.

It is also important to recognize what is an appropriate treatment goal in the forensic context. The goal of court-ordered treatment is not to maximize the improvement a participant's mental health. While this may be a side effect, it is not the ultimate goal. The Court's goals of parenting. When providers create a treatment process as they would if the individual were a private pay provider, often the goals will not be in line with the Court's request.

There is clear statutory support for the Court to order treatment when the parenting plan is not being followed (e.g., reunification situations).

2. TREATMENT PROCESSES WITH TIME EXPECTATIONS:

ONE OF THE MOST SIGNIFICANT concerns about mandated mental health interventions has been the time it takes to progress in therapy and the ultimate cost. Too often, clients complain that therapy has taken years. This is especially the case with reunification work. While there are situations in which therapy can take a long time, especially because of the existence of deep laden mental health issues, such should be the exception rather than the expectation. The system should expect therapists to integrate time frames within treatment plans that create a process and treatment change expectations (e.g., by X date, the child shall be able to spend at least a two-hour period alone with his father). While it is not essential for the provider to meet the goal given the possibility of unforeseen circumstances, the provider should identify within a later treatment plan why that goal was not met and how the process will be revised to try to meet the goal at a future identified date.

3. RECONSIDER SAFE HAVEN/ HARBOR COUNSELING:

THE INITIAL INTENT OF SAFE haven counseling was to provide an environment in which counselors see children without fear of disruption from a parent/parents. The intent was to somewhat emulate what adults can expect in a therapeutic process – i.e., some level of confidentiality within a therapeutic environment without fear of others reviewing records without legal permission (e.g., an authorization from the client) and exposing confidential discussion.

Initially, the scope of the concept was to restrict each parent from accessing the child's records or infringing on the child's process. However, it was recognized that parents still had an interest in obtaining information regarding what was being discussed in treatment (e.g., what was going on with the child and how the parent could assist). To strike

the balance between interests, the goal was to restrict access to records and to defer to the professional to determine how to involve the parent (e.g., when to invite a parent into sessions, what information to disclose in the form of a periodic treatment plan, a method for parents to submit information to the provider). However, this approach has corresponding limitations. For a few illustrative but non-exhaustive examples: (1) the legal decision-making parent(s) is/are unable to access full information for the purpose of making appropriate legal decisions concerning the child; (2) there is a barrier to discovery of information relating to one or both parents' inappropriate conduct or interference with legal decisions of the other parent; (3) the legal decision-making parent(s) are limited in assessing the treating therapist's performance; (4) the legal decision-making parent(s) may be deprived of important information that may cause them to alter their own parenting behavior; and (5) the legal decision-making parents may not have an opportunity to provide additional critical information to the therapist that may be essential to effectively helping the child due to the parent(s) being in the dark regarding what the child has been communicating to the therapist.

The initial intent of safe haven counseling was to provide an environment in which counselors see children without fear of disruption from a parent/parents. The intent was to somewhat emulate what adults can expect in a therapeutic process - i.e., some level of confidentiality within a therapeutic environment without fear of others reviewing records without legal permission...

Importantly, parents are statutorily permitted access to a child's records. The legal foundation for restricting such access is based on Arizona's medical records law.[5] Essentially, with an expectation that a child in a high-conflict divorce is going to talk about her parents within treatment, it is presumed that release to the parents of the child's records including discussion about the parents could cause substantial harm to the child.

For many attorneys and judges, safe haven counseling has become a process that minimizes parental rights.

While well intended, the practical impact of safe haven counseling has been much broader. For many attorneys and judges, safe haven counseling has become a process that minimizes parental rights. Some professionals have unduly extended the concept of safe haven counseling and refused to 1) talk to parents or other involved professionals; 2) create treatment plans; 3) release records to anyone (including other appointed professionals); and 4) participate in litigation (e.g., when subpoenaed to testify). These unintended consequences of insufficiently considered safe-haven orders have created backlash from parents, their attorneys and now, possibly, from the Court of Appeals. As a result, the debate has shifted to discussion of an appropriate balance between protecting children in therapy and providing appropriate information and control to the parents, as is seen in *Nicaise and Paul E*. Also important is the presumed basis for the appointment of a mental health professional pursuant to A.R.S. §25-405 and §25-406. If the appointee will advise the Court and, in accordance with those provisions, become a witness who is subject to cross-examination, some of the behaviors we see in the practice of safe haven therapy (e.g., not communicating with the Court, and withholding of records) are inconsistent with the statute.

...the debate has shifted to discussion of an appropriate balance between protecting children in therapy and providing appropriate information and control to the parents,...

A simple solution is to modify the parameters of safe haven counseling. In order to respect parents' rights, if a counselor does have concern about a parent accessing records, the counselor can refuse to release records pursuant to A.R.S. §12-2293. If a parent intrudes on the counseling process or is causing psychological harm to the child, the Court can intervene with orders to change legal decision-making, thus creating legal boundaries on which the therapist can rely. In extreme cases, if warranted, the Court can consider appointment of a BIA to consider whether a dependency filing is necessary (assuming the other parent is not willing or able to care for the child).

Alternatives to ordering therapy:

The recent Court of Appeals cases do reference alternatives available to the Court if there is concern about a parent acting contrary to a child's best interests. These alternatives include modification to legal decision-making and parenting time. In many instances, a parent will be motivated to agree to and cooperate with various forms of treatment to please the Court. If the Court may consider refusal to be a

factor, the Court may weigh the factor heavily in legal decision-making and parenting time orders; i.e., there is a considerable negative consequence to non-cooperation, including loss of decision-making rights or loss of parenting time. Additional consequences may include contempt and, in extreme cases, appointment of a BIA and possible dependency filings. In alienation cases, in order to assure therapy will occur, the Court could vest the alienated parent with the legal decision-making authority to pursue therapy with the children and to choose the therapist (since the alienating parent is unlikely to cooperate). In appropriate cases, the Court can also induce the alienating parent to participate in therapy, with the consequence of failing to do so being loss of time with the children as the other viable alternative to reduce the alienation.

The Conclusion:

THE RECENT COURT OF APPEALS decisions have made it clear that our community has to change. Mental health professionals can play an important role in helping families stabilize. In fact, with some cases, intervention with the assistance of a forensically informed professional may be the only reliable method of stabilization. Often in high-conflict situations, Courts have few remedies to assist positive change toward a healthy family, an important step toward meeting the children's best interests. If the option for outside services disappears, it is likely that the situation will worsen. For example, high-conflict parents will continue the conflict and have more court contacts, children will continue to suffer through the trauma of divorce, and in some cases, children will refuse to have a relationship with a parent and the Court will have few resources to ensure meaningful contact. All of these outcomes are contrary to the best interests of children. The community must find ways to utilize these available services while minimizing the impact on parents' rights. This balance will not likely be achieved without legal intervention and compromise. FL

1) There is also a corollary question as to whether Court personnel in the Conciliation Court have quasi-judicial immunity for functions such as mediation and treatment.

2) A.R.S. §13-2810 Interfering with judicial proceedings; classification identifies, "A. A person commits interfering with judicial proceedings if such person knowingly... 2. Disobeys or resists the lawful order."

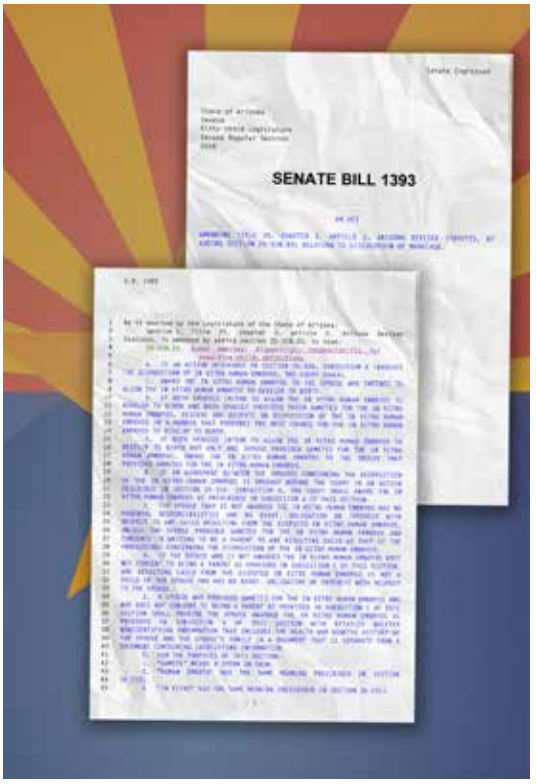
3) A.R.S. § 13-3601. Harassment; classification; definition– 3. Repeatedly commits an act or acts that harass another person.

4) Note for example, Board of Behavioral Health rules for therapists:
R4-6-1102. Treatment Plan A licensee shall: 1. Work jointly with each client or the client's legal representative to prepare an integrated, individualized, written treatment plan, based on the licensee's provisional or principal diagnosis and assessment of behavior and the treatment needs, abilities, resources, and circumstances of the client, that includes: a. One or more treatment goals; b. One or more treatment methods; c. The date when the client's treatment plan will be reviewed; d. If a discharge date has been determined, the aftercare needed; e. The dated signature of the client or the client's legal representative; and f. The dated signature of the licensee; 2. Review and reassess the treatment plan: a. According to the review date specified in the treatment plan as required under subsection (1)(c); and b. At least annually with the client or the client's legal representative to ensure the continued viability and effectiveness of the treatment plan and, where appropriate, add a description of the services the client may need after terminating treatment with the licensee; 3. Ensure that all treatment plan revisions include the dated signature of the client or the client's legal representative and the licensee; 4. Upon written request, provide a client or the client's legal representative an explanation of all aspects of the client's condition and treatment; and 5. Ensure that a client's treatment is in accordance with the client's treatment plan.

5) 12-2293. Release of medical records and payment records to patients and health care decision makers; definition ... B. A health care provider may deny a request for access to or copies of medical records or payment records if a health professional determines that either:

BY HEATHER M. STRICKLAND
a Fellow of the Academy of Adoption
& Assisted Reproduction Attorneys

osing control of embryos



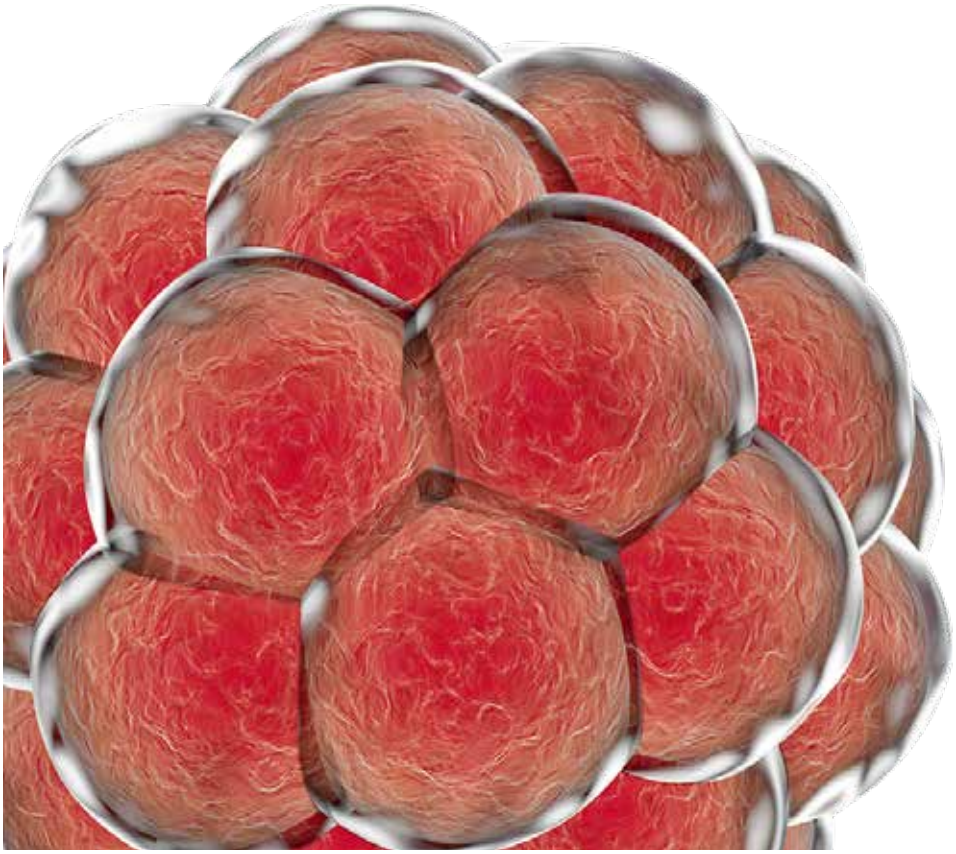
An important and deeply problematic bill will go into effect this August regarding the award of embryos in a divorce. Senate Bill 1393 attempts to formalize who will be awarded embryos in the event of a dispute between divorcing spouses and who will be responsible for any resulting children. The law requires the Court to disregard any prior written agreement between spouses regarding the disposition of their embryos in the event of a divorce, agreements most often made at the time they created their embryos.

Instead, embryos are to be awarded to the spouse "who intends to allow the in vitro human embryos to develop to birth." The bill goes on to divest a spouse of their control of embryos if they did not provide a gamete (sperm or egg) in the creation of the embryo. If both spouses want the embryos, the Court is directed to award the embryos, "in a manner that provides the best chance for the in vitro human embryos to develop to birth."

Embryos have been successfully frozen and used to achieve pregnancy since the mid-1980s. It is estimated that there are over 600,000 frozen embryos in storage in the United States alone.[1] Infertility affects millions of American. According to the Centers for Disease Control and Prevention (CDC), 12% of women aged 15 to 44 years, regardless of marital status, experience infertility.[2] Infertility is attributed equally to female factors alone, male factors alone and female and male factors combined. There are more than 12 infertility clinics in Arizona.

When a couple uses a clinic to create embryos, they are often asked to sign an extensive written agreement regarding the disposition of embryos in the event of death or divorce. It forces couples to think carefully about scenarios in which they are no longer together and requires

SB 1393 risks unwarranted governmental intrusion into the very personal and private decision of whether to have a child. It favors the right to procreate over the right not to procreate. A disagreement about the disposition of embryos is a conflict between two individuals, not an individual and the state.



them to specify their wishes in writing. Options couples consider include discarding the embryos, donating them to research or another couple, or allowing one or the other spouse to have full ownership and control. Conscientious clinics will not proceed with the creation of embryos without such an agreement.

SB 1393 risks unwarranted governmental intrusion into the very personal and private decision of whether to have a child. It favors the right to procreate over the right not to procreate. A disagreement about the disposition of embryos is a conflict between two individuals, not an individual and the state. Yet, the state will impose its choice upon a couple in conflict that has a written agreement instead of enforcing the terms of their agreement. This approach to the disposition of embryos between divorcing spouses is counter to the majority of case law from around the country which supports enforcing a written agreement.[3] Come August, hundreds, if not thousands of married couples in Arizona are going to have embryos disposition agreements that are not enforceable if a disagreement between them arises.

The law unfairly discriminates against spouses who could not provide their own gametes to create embryos by determining the disposition of the embryos based on genetic contribution. It will have a greater impact on same-sex married couples for whom it is impossible for both spouses to have provided the gametes. Yet, it will have no affect on unmarried couples who create embryos. Instead, any written agreement an unmarried couple executed regarding the disposition of embryos will control.

The outcomes of this law are potentially extreme: a female spouse watches her genetic child gestated by another woman against her will; a spouse is forced to decide between parenting a child with a former spouse or facing the emotional consequences of choosing not to parent; a spouse who was not awarded legal decision making authority for existing children is awarded the couples embryos because that was the only spouse who intended to allow the embryos to develop to birth. None of these scenarios could possibly have been contemplated by the couple when they first sought infertility treatment in the hopes of starting a family together. FL

Endotes

1) The New York Times, “Industry’s Growth Leads to Leftover Embryos, and Painful Choices,” June 17, 2015.

2) The CDC defines infertility as not being able to get pregnant after one year or longer of unprotected sex.

3) E.g., Kass v. Kass, 696 N.E.2d 174, 180 (N.Y. 1998); *Roman v. Roman*, 193 S.W.3d 40 (Tex. App. 2006); *In re Marriage of Dahl & Angle,* 194 P.3d 834, 841 (Or. 2008).

The New Federal Divorce Law

BY REGINA SNOW MANDL, ESQUIRE

I HAVE NEVER HAD A CLIENT WHO HAS said that he or she is getting divorced to take advantage of the tax laws. Divorce is an overwhelmingly difficult and often very painful personal experience, and while support and property division are factors, they generally are not what drives the decision to end a marriage. Historically, divorce laws are shaped by the common and statutory laws of the states, and with only certain exceptions it is state, not federal, law that is central. The Tax Cuts and Jobs Act H.R.1, enacted on December 22, 2017, has changed this dynamic in both obvious and subtle ways, culminating in what one could call the "New Federal Divorce Law."

Although there is the perception that the primary purpose of the Tax Cuts and Jobs Act was to significantly reduce tax rates for businesses and simplify taxes for individuals, there is a category of individuals also greatly affected: divorced and divorcing couples. The changes to the tax laws for these individuals are so profound that they require a reexamination of traditional concepts for family support and, as a result, asset division. These changes took effect January 1, 2018, with the exception of the repeal of the alimony deduction, which takes effect after December 31, 2018. Unlike the change in the corporate tax rate, the tax law changes for individual's sunset in 2025 unless further legislation is enacted. The one exception is the expansion of 529 Plans, described below, which in part does not have an expiration date.

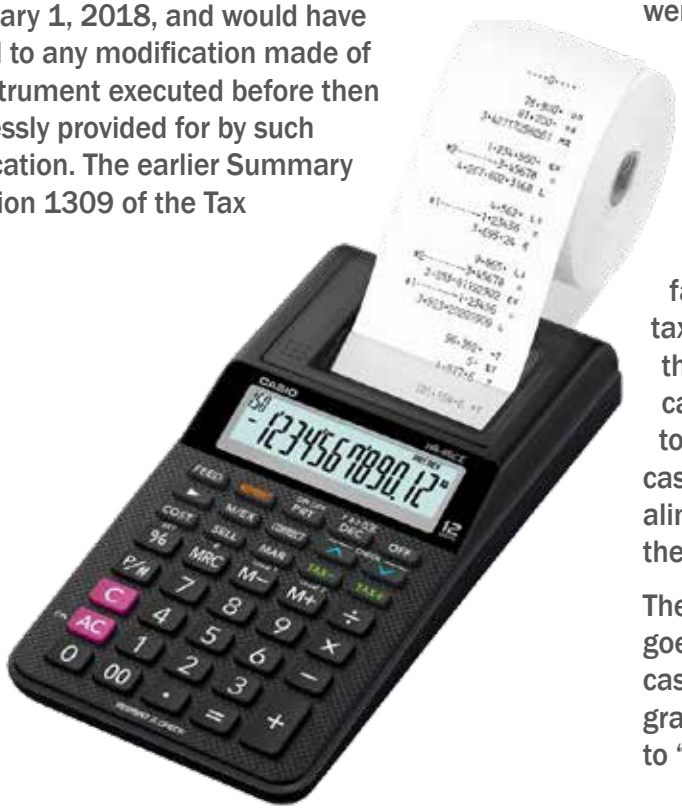
The Tax Cuts and Jobs Act is complex and lengthy, and I have no doubt that there will be much more discussion about its impact on family law in the future. To begin the conversation, I have selected the following five areas:

1. Repeal of the alimony deduction effective December 31, 2018, and for all modifications to preexisting divorce judgments if the modification expressly provides that alimony is not deductible by the payor or includible by the payee.
2. Repeal of personal exemptions effective January 1, 2018, worth $4,050 per person in 2017.
3. Doubling of the child care tax credit and substantial increases in the income limits for who can claim the credit. For taxpayers who pay no federal taxes, there is a credit of up to $1,400.
4. Expansion of categories for distribution of 529 Plans, which can now be used for up to $10,000 per student per calendar year for attendance at a private or religious elementary or secondary school and may also be applied to an ABLE program.
5. Repeal of the interest deduction on a home equity line of credit or home equity loan, unless for purposes of acquisition or home improvement.

Repeal of the Alimony Deduction

Under current federal law, alimony payments are deductible from the gross income of the payor and taxable as income to the recipient. The Tax Cuts and Jobs Act repealed the alimony deduction, so that it is no longer deductible from the gross income of the payor, nor is it taxable to the recipient.

The first version of the bill would have made the repeal of the alimony deduction effective as of January 1, 2018, and would have applied to any modification made of any instrument executed before then if expressly provided for by such modification. The earlier Summary of Section 1309 of the Tax



ALL THOSE ASSETS

Although there is the perception that the primary purpose of the Tax Cuts and Jobs Act was to significantly reduce tax rates for businesses and simplify taxes for individuals, there is a category of individuals also greatly affected: divorced and divorcing couples.

Cuts and Jobs Act H.R. 1 stated that the considerations were that the provision would eliminate what is effectively a "divorce subsidy" in that a divorced couple can often achieve a better result than a married couple and that the provision recognizes that spousal support should have the same tax treatment as within the context of a married couple. The bill was eventually enacted repealing the alimony deduction, but the effective date was changed from January 1, 2018, to December 31, 2018. See Section 11051(c), not part of the Internal Revenue Code.

In Massachusetts, it took years to enact the Alimony Reform Act (Massachusetts General Laws Chapter 208 §§ 48-55; 2011 Mass. Acts 124 § 3). The Massachusetts Child Support Guidelines (www.mass.gov/courts/docs/child-support/2017-child-support-guidelines.pdf) are reviewed and revised periodically, most recently in September 2017. Both the Alimony Reform Act and the Massachusetts Child Support Guidelines have specific mathematical directions that were carefully developed. One of the factors in the calculation was the deductibility of alimony for income tax purposes. To fix this will likely take an act of the Legislature or the appellate courts.

While this all gets sorted out, the Probate and Family Court will need to consider if an alimony order of 30–35 percent of a payor's income is fair when it will not be deductible by the payor, nor taxable to the payee. Under the existing alimony law, the court may need to write findings of fact in each case in which the alimony order does not conform to the statute. There will be a rush to finish divorce cases, either by trial or agreement, to lock in the alimony deduction before the end of 2018, burdening the probate and family courts even more.

The effect of the deduction of the alimony repeal goes beyond the boundaries of the divorce cases themselves. The Tax Cuts and Jobs Act in grandfathering preexisting divorce agreements refers to "divorce or separation instruments." Code Section

121 (d)(3)(C) defines a divorce or separation instrument as "(i) decree of divorce or separate maintenance or written instrument incident to such decrees, (ii) a written separation agreement, or (iii) a decree (not described in clause (i) requiring a spouse to make payments for the support or maintenance of the other spouse." What will happen to alimony provisions in existing pre-marital and post-marital agreements?

Repeal of the Personal Exemptions

Many divorce agreements have provisions for taking the personal exemptions for children. This will no longer be available, even if it's already in the agreement. However, as the repeal expires December 31, 2025, it would be prudent to provide for the taking of personal exemptions for the children if, as, and when they become available. See Section 11041 and Code Section 151.

Child Care Tax Credit

The child care tax credit has been increased from $1,000 to $2,000 per child per calendar year. The income limits for the parents have been dramatically increased from $75,000 to $200,000 for unmarried persons and from $110,000 to $400,000 for married taxpayers. For taxpayers who pay no federal taxes, there is a credit of up to $1,400. The suspension of the personal exemptions through 2025 does not affect which party is entitled to the child care tax credit. See Section 11022 and Code Section 24.

529 Plans

529 Plans, which had been limited to savings for higher education expenses, can now be used for tuition in connection with enrollment or attendance at an elementary or secondary public, private, or religious school (Section 11032.529, Code Section 529). There is a cap of $10,000 per student per calendar year from all plans combined. The expansion of the use of 529 Plans does not have an expiration date except for transfers to ABLE programs, which will expire at the end of 2025.

A note of caution from Barry Salkin, Esquire, of The Wagner Law Group: "The benefit of 529 Plans to a certain extent depends on whether state law will allow deduction or credits for these contributions. A change in the federal tax code is not automatically followed in Massachusetts. If Massachusetts takes no action with respect to 529 Plans, then individuals who contribute to a 529 Plan for elementary and secondary education will not be entitled to the Massachusetts state tax deduction for contributions and may be taxed upon the withdrawal of the funds from the plan for pre-college expenses. See Sections 11032 and 11025."

Deduction of Interest on a Home Equity Line of Credit or Loan

Sometimes parents will access the equity in their home to pay for a child's college education. Effective January 1, 2018, the interest on a home equity line of credit or home equity loan will no longer be deductible unless it is used for "acquisition purposes." Acquisition purposes include improvements to the residence. The taxpayer will need to keep records to show whether the funds were used to improve the residence. Mortgage interest is still deductible. Preexisting mortgages (the old limit was $1 million) are grandfathered; new mortgages of up to $750,000 will have an interest deduction; and interest for refinanced mortgages up to the limits of the grandfathered mortgage or the new limit will be allowed. See Section 11043 and Code Section 163(h)(3)(F).

ALL THOSE AGREEMENTS

Many divorce agreements have provisions for taking the personal exemptions for children. This will no longer be available, even if it's already in the agreement.

What to Do Now

Given that most of these changes expire in 2025, going forward it would be a good idea to have a tax clause in all new divorce cases that provides options should the law rewind to 2017. While no one has a crystal ball as to what may be in store, it would be prudent to consider language in all agreements and proposed judgments that will minimize future disputes and the attendant legal costs.

This article was written to highlight five changes that I felt will likely affect divorce cases. However, keep in mind that there have been extensive changes in the federal tax laws (the new federal tax law is over 600 pages long). Care should be given in every situation to evaluate how the new federal tax law will affect the property and support provisions in each particular case. My intention was to provide food for thought, and not to give, nor should it be considered to be, legal advice. u FL

Regina Snow Mandl, Esquire, is a partner at The Wagner Law Group in Lincoln, Massachusetts. She is a member of the Massachusetts Probate and Family AIC in Boston and a former member of the American Inns of Court Board of Trustees.

CASE LAW UPDATE

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

IMPORTANT CLE DATES

November 16, 2018	**State Bar of Arizona's Advanced Family Law**
January 17-18, 2019	**Family Law Institute**
June 26 - 28, 2019	**State Bar Convention**
July 1 - August 1, 2019	**Deadline to Apply for Specialization Application**
August 2 - October 1, 2019	**Application for Specialization Accepted with Late Fee**
September 15, 2019	**MCLE Affidavit Filing Deadline**

Want to contribute to the next issue of Family Law News?

… If so, the deadline for submissions is December 21, 2018.

Would you like to...

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

WE WANT TO HEAR FROM YOU!

PLEASE SEND YOUR SUBMISSIONS TO:

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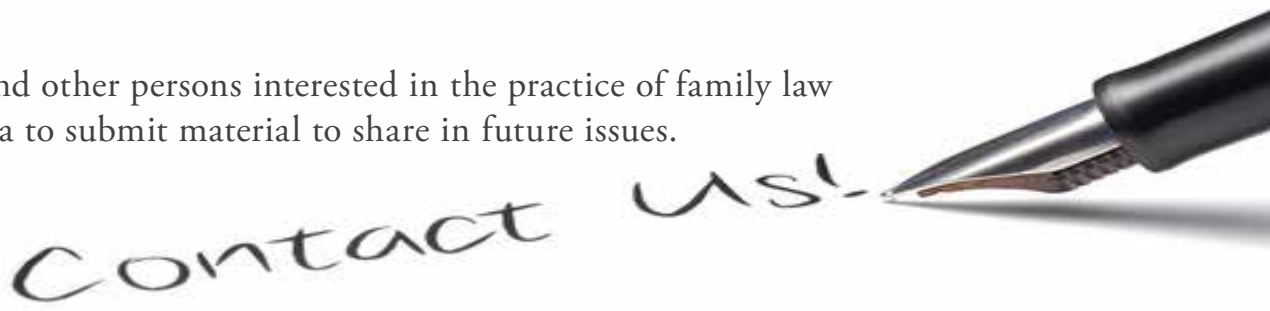
We invite lawyers and other persons interested in the practice of family law in Arizona to submit material to share in future issues.



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