

# FAMILY LAW NEWS

spring

2020

## this issue...

- 1 From FLEC  
BY THE FAMILY LAW  
EXECUTIVE COUNCIL OF THE  
STATE BAR OF ARIZONA
- 2 Changes  
BY ANNETTE BURNS
- 5 Trial by Telephone or  
Video-Conferencing  
BY ANNETTE BURNS &  
NICOLE SIQUEIROS-  
STOUTNER
- 10 Top 6 Things Parents  
Need to Know About the  
COVID-19 Stimulus Package  
BY MARISSA L. SITES &  
LAURA C. BELLEAU
- 12 Notarization and  
Social Distancing  
BY HEIDI A. LUKACSIK
- 15 COVID and Co-Parenting:  
Stick With the Plan, Be  
Flexible When You Can  
BY ANNETTE BURNS
- 17 Useful Client Letters  
BY NICOLE  
SIQUEIROS-STOUTNER  
& CLAUDIA D. WORK
- 22 Helpful Online Resources
- 25 Last Minute Information
- 26 Contribute to Future  
Issues of Family Law News



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



FROM FLEC

COVID-19

## FLEC: COVID-19 Newsletter Special Edition

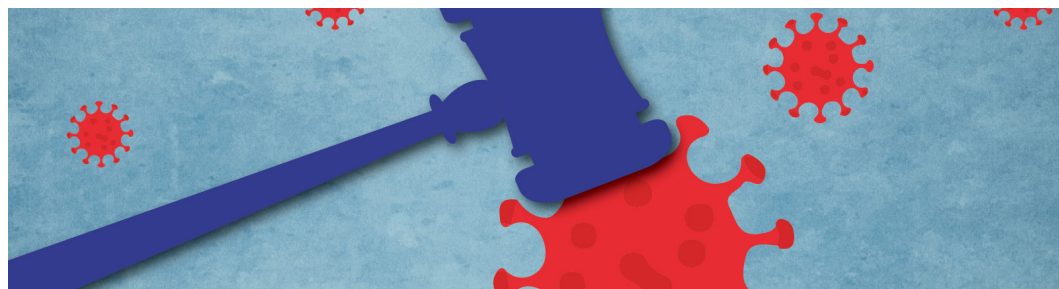
The COVID-19 pandemic poses unprecedented personal, legal, financial, and institutional challenges. During this difficult time, the Family Law Executive Council prepared this special edition newsletter to offer useful information, insight, and guidance to the Section members.

We hope this newsletter provides some assistance to you as this global crisis continues to unfold. We also want to thank those individuals who donated their time, effort, and intellectual property to this newsletter in support of this community. Let their generosity be an example to us all, and let us work to stand together as a community during these difficult times.

We wish you and your loved ones safety and health.

Sincerely,

*The Family Law Executive Council of the State Bar of Arizona*



# Changes



By  
**Annette Burns**  
Law Offices of Annette T. Burns

**THERE'S ALREADY PLENTY OF ADVICE** on the internet about what family law attorneys should be telling clients these days about parenting and court orders. Resources for that type of advice are in this newsletter's articles and Resources section. This article is more about what we as family law attorneys can be doing for ourselves, our offices, our employees, and our clients, at least structurally, in light of COVID. When I talk about COVID in this article, I'm referring to everything associated with it - stay at home orders, isolation, quarantine, loss of business, loss of employment, actual illness, and the ways our personal and professional lives have been changed by all of it.

The next few months are going to be tough, no question. Even if the isolation/stay-at-home durations are what is expected now - at this writing, most are planning on lives and businesses being entirely disrupted through May, but that could have changed drastically by the time this is read - our practices will continue to be turned on end for months after.



I'M A STAY-AT HOME FAMILY LAWYER

▲  
If we learn one thing during SAH (stay at home), it'll be a re-evaluation of the necessity of our physical offices.

Before you entirely give up your physical, separate office location, I'd recommend you try working on your patio in July and August.



**Office locations.** If we learn one thing during SAH (stay at home), it'll be a re-evaluation of the necessity of our physical offices. Some attorneys will learn they desperately need the separate, non-home office and will appreciate the office more than ever, after learning how tedious it can be to balance a practice on the dining room table or in the guest room. Some will learn that they don't really like their laptop and they need a full desktop setup to get real work done. Others will realize they'll never again work on anything but a tablet.

And some attorneys will decide, based on this forced experiment, that a physical office isn't necessary anymore. We all know those who went virtual years ago and swear by it, but I also often get requests from those people to use my conference rooms, so personally, I've never been convinced I'm ready to go entirely virtual.

Before you entirely give up your physical, separate office



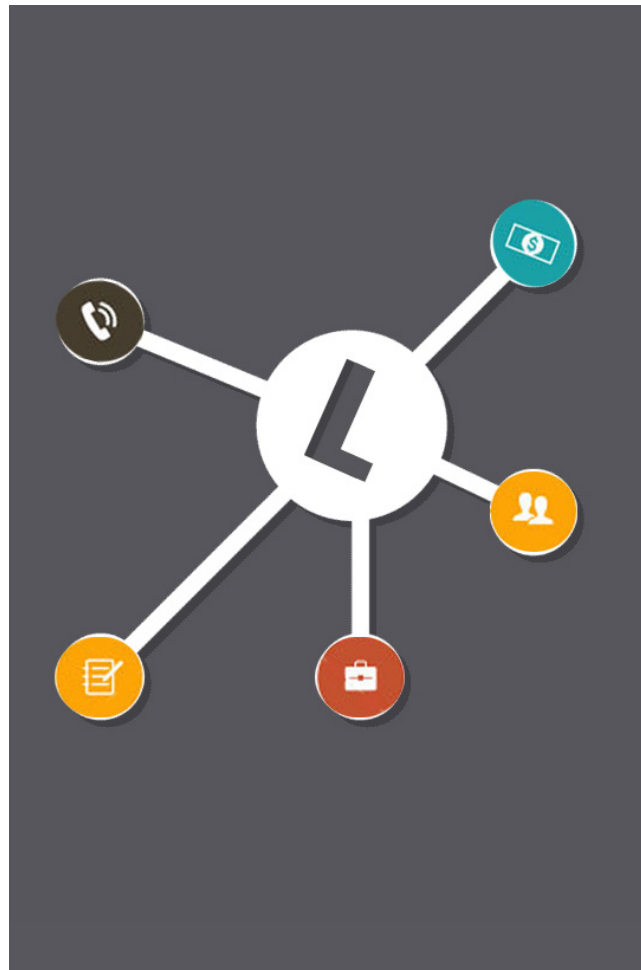
location, I'd recommend you try working on your patio in July and August. While it's been pleasant out there so far during COVID, in another 30 days I'm going to be limited to my dining room table to get serious work done at home.

Consider carefully what has worked for you when working from home, and what you've missed most about your office. The outbreak could help us discover that a smaller office space, a different configuration, or different systems will serve us better than our old ways, when we actually get to return to "old ways".

**Landline at home.** I've reconsidered having a landline in my home. Doing so many telephone consults on my cell phone has given me wrist and neck pain, and it's just awkward. When the iPhone speaker can't be used, I'm likely to hang up the call with my fat face against the screen. I'm told AirPods (especially noise-cancelling) are the way to go, and I'll try that. But, the court has never liked the use of cell phones for telephonic appearances, and some divisions prohibited it entirely, for good reason, at least until COVID. There could be a basis to appreciate a landline connection at home, if you're serious about working from home most of the time.

**Client access to us.** I've never been one to text with clients, and I'm more set against that now than ever. When the COVID uproar started and I was being inundated with questions from clients, I couldn't have kept up if the questions were coming in by text. Instead, I responded to client emails promptly - almost immediately - fully and with all the information I had, and I followed up with them frequently. Email worked just fine, and the emails are now organized in each client's file to show exactly what communications have been sent, and when. Sometimes a response to a client simply requires re-sending an email I already sent. Had these communications happened by text, they'd be all over my phone and hard to access.

Some clients want texting because they think it's more immediate access to the attorney. That's not always true, as I've never been one to carry my phone around during the work day. If the client sees they have prompt access through email, that should reassure most people. Email also lends itself to important boundaries, which for me includes no emailing (reading or writing) after 8pm (Pre-COVID, that was 7pm or even 6pm. I've bent my own rules a little.) Most importantly, I will never sway from the



thought that communications between attorney and client deserve slightly more formality than texting.

Are client face-to-face meetings obsolete forever? Probably not, but post-COVID, I predict that everyone will be far more open to virtual and telephonic meetings than they were before, and I will be consistently suggesting it for all client meetings. Now that I've Zoomed, I can't go back.

**Consider billing rates.** I made a personal decision to drop my mediation rates by \$75/ hour for Zoom meditations for the coming months. Even though my physical costs of maintaining an office and staff remain the same, Zoom mediations have some benefits for me, and I'm willing to pass on some of that benefit to the client. Others may want to drop billing rates across the board **for a set period of time**. Consider a temporary drop in rates





for existing clients, and maybe for new clients that retain you in the next 60-90 days. But make a firm plan to return to your former rate on a given date, and consider a planned rate increase at the beginning of next year. Notify clients in writing, and on your website and social media pages, of the **temporary** reduction in rates to help people get through the coming months, but don't tie yourself to a reduced rate forever.

Also consider lowering your billing rate, temporarily, for the work you like most. If you love doing prenuptial agreements as opposed to litigation, lower your rate just for prenups for a while. If you can't easily list five to ten things about your practice that are your favorites, this is a good time to sit down, think, and make that list so you have specific things to aim for going forward.

**Support Modification Work.** All family law attorneys are going to have to seriously consider how we're going to handle financial modifications. There is likely to be an increase in child support and spousal maintenance modifications which need to be filed and defended. The court is going to have to revamp how it handles modification actions. Determine how you will handle these actions, how much you'll charge, and how you can expedite these filings. Modification actions may be what keeps most of our employees on the payroll in the coming months. And that thought brings me, finally, to employees.

**Employees.** I had to write this section last, because it was the hardest for me to contemplate. Many of us have already had to let employees go. Ironically, as recently as two or three months ago, experienced family law employees were hard to find. Don't let yourself forget how difficult it is to find and train someone new. If

you have an assistant or paralegal with a lot of experience who is also motivated and knows your practice, it benefits you to do everything possible to keep that person on the payroll through the coming months. An experienced employee who knows your practice should be able to set up systems and forms to make modification filings more efficient and allow you to set a flat or reduced rate for handling those actions. Think creatively about what your best employees can do to stay busy when things are slow (likely for at least the next sixty days). You may have an experienced paralegal scanning documents, closing old files, and creating forms, which normally isn't the highest and best use of their time, but in the long run, doing that is far cheaper than furloughing a good person go and trying to retrain someone brand new when business is flowing again.

**Business will return.** Everything about our practices will look a bit different than before. These few months of drastic change are likely to lead to long-term change in the way everything is done, and family law attorneys have an opportunity, now, to plan for change and not be damaged by it. [FL](#)



**ANNETTE T. BURNS** is in private practice in Phoenix, Arizona. She is a certified specialist who focuses her practice on family law, mediation, arbitration, special-master work, and parenting coordination.

## **TRIAL BY TELEPHONE OR VIDEO-CONFERCING**

Given the pandemic, virtually all trials and evidentiary hearings cannot take place in person. Courts have been faced with two choices: continue the hearing until some nebulous date in the future (anecdotal evidence suggests that judges have mostly been vacating with no scheduled date, but rather a teleconference to talk about options or rescheduling) or find some other way to take evidence. Hence, the birth of telephonic evidentiary hearings and, hopefully, hearings by video-conference.

By  
**Annette Burns**  
Law Offices of Annette T. Burns  
**Nicole Siqueiros-Stoutner**  
Sheldon & Stoutner



▲  
Given the pandemic, virtually all trials and evidentiary hearings cannot take place in person. Courts have been faced with two choices: continue the hearing until some nebulous date in the future or find some other way to take evidence.





### **C** LIENT PREPARATION FOR TELEPHONIC AND VIRTUAL HEARINGS:

- Consider your client's location and mode of communication for the hearing. If a client is appearing from a location outside of your office, remind them to be in a suitable location (seated; not in a car; no interruptions, pets, or children present). Assuming you allow your client to be physically in your office, arrange to have the client in a separate conference room or office to ensure social distancing.
- During a trial/hearing, you may use a chat service like Google chat or texting to converse with your client when they are NOT testifying.

▲  
If using a webcam, be mindful of the background and your appearance. You could also consider the use of a virtual background on zoom.us.

This is similar to using a pad of paper when you are sitting at counsel's table in the courtroom. Make sure your client understands this and uses it. Chatting or texting with a client during their testimony is unethical - don't do it.

- If a specific program (GoToMeeting or Zoom.us) is being used for a video hearing, make certain your client has the appropriate app or software downloaded ahead of time and practice with them at least once.
- If using a webcam, clients should have acceptable clothing and be appropriately groomed as they will be viewed by the judge.
- As it relates to exhibits, attorneys must work with the client in advance to ensure they have a sufficient level of comfort with Bates-numbering and exhibits as described below.

### **PREPARING YOURSELF (THE ATTORNEY) FOR TELEPHONIC OR VIRTUAL HEARINGS:**

- Just as your client should consider their location, you should also be mindful of where you are during the trial or hearing. Attempt to engage in the hearing or trial in a quiet suitable location, with no pets or children.
- If you have staff or associate attorneys that you will want on the call or video trial/hearing, obtain permission from the other counsel first, or at least notify them of your plan.
- If using a webcam, be mindful of the background and your appearance. You could also consider the use of a virtual background on zoom.us. Also, do not have other clients' names visible (such as on a whiteboard or file behind you.)



## HANDLING EXHIBITS FOR A TELEPHONIC OR VIRTUAL HEARING:

- All exhibits should be fully Bates-numbered, and e-mailed in advance to your client, as well as all witnesses and experts. Obtaining exhibit numbering worksheets from the clerk is more important than ever as it can be very confusing without uniformity in the exhibit numbers, especially on the phone

- It may be helpful to the Court to use Bates numbering that includes reference to which party is offering the exhibit such as: *SmithMother00001* or *JonesHusband00001*. Bates numbering done in Adobe Acrobat allows for very specific labeling.

- Many times attorneys combine exhibits into one .PDF file and use colored papers to demarcate exhibits in that single file. This will not work as well in telephonic or video evidentiary hearings as specific exhibits will be hard to locate and may take significant time. A better solution is to save each exhibit separately in a folder on Dropbox then e-mail the folder to the court, your client, witnesses, and experts. Or, exhibits already in PDF format may be combined in a PDF portfolio which has a searchable index. For this method, you must have a fairly sophisticated client who is comfortable with PDF portfolios, so be sure and consult with your client about his or her level of comfort with folders, Dropbox, and PDF portfolios.

- If you determine your client, expert, or witness is very unsophisticated with PDFs and/ or Dropbox, you will need to have hard copies of the exhibits delivered to the client in a notebook and in advance.



Make sure these hard copies are Bates-numbered exactly the same as those you delivered to the court and the opposing party. This may be intuitive, but clients may not even be aware of what Bates-numbers are and you need to ensure they understand them before the hearing.

- To ensure a timely and uniform exchange of exhibits, establish a specific time, prior to the hearing, to exchange exhibits with the opposing counsel/party. Discuss what format you will use for the exchange: e-mail or courier. This date is for the exchange of the actual hearing exhibits, in the specific form, order, and numbering of exhibits as they will be used at the hearing. It is not the disclosure date.

▲  
All exhibits should be fully Bates-numbered, and e-mailed in advance to your client, as well as all witnesses and experts.

- **Delivery of exhibits to the court:** The court order setting a telephonic hearing should include instructions on how to deliver exhibits to the court. Some courthouses are still open for limited operations, including hearings that by statute must be held in person, and in-person filings at court are still permitted. So, the court entrances used for those purposes may also be used to deliver exhibits. If the order setting the hearing does not instruct you how to deliver your exhibits to the Clerk, call and email the assigned judicial division for instructions. They may accept the exhibits by e-mail. In general, and as of the date of this article, deliveries to the court should not be affected by partial court closures.



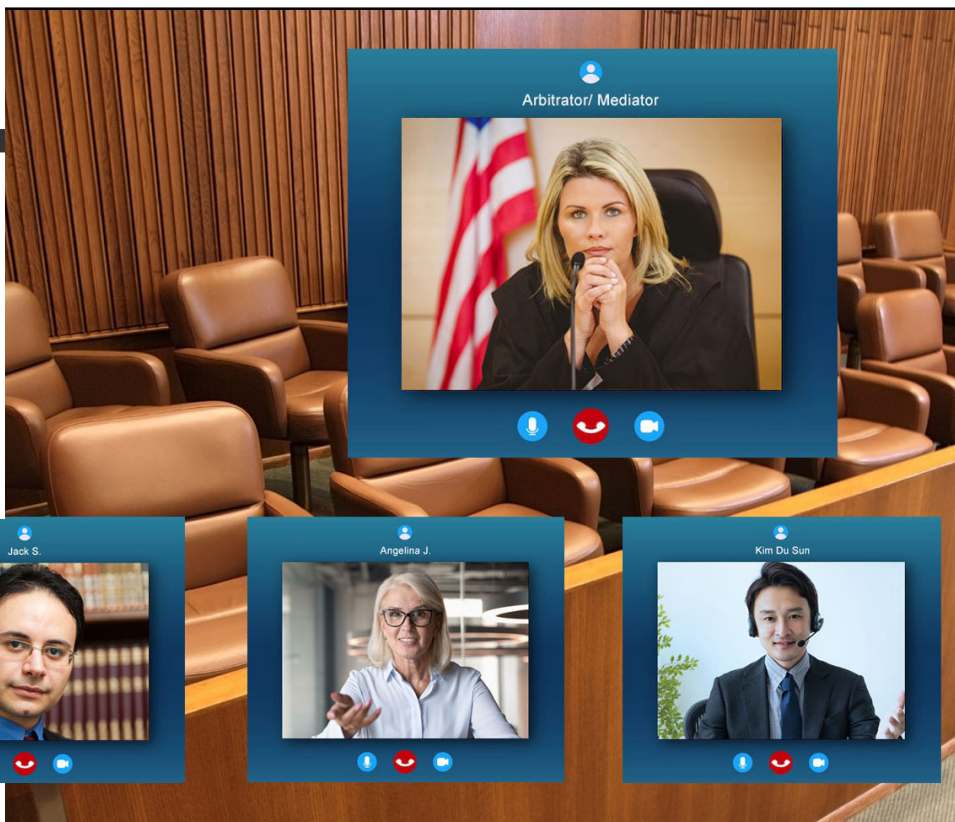
### DEVICE CONSIDERATIONS:

- Landline phones are always preferred, but not always available during this time. In the event a cell phone must be used and there remain no other options, cell-phone service should be confirmed in advance of the hearing. Participants should be cautioned to not drive and stay in one place to avoid disrupting service during a hearing.

- **GoToMeeting.** At the time of this writing, Maricopa County Judges may be training on GoToMeeting, so it's possible telephonic/remote hearings could be on this platform in the future. Another option to train on, at least for client preparation, is zoom.us for video-conferencing. Attorneys who are not yet versed in Zoom or GotoMeeting should become comfortable with this platform as soon as possible to facilitate client contact.

### LITIGATING A TELEPHONIC OR VIRTUAL HEARING:

- The single most important tip for litigating in a telephonic hearing is that speakers should identify themselves each time they speak: This applies to objections, as well. To provide a few examples, attorneys should state their names as follows: *"This is Burns: We filed that Motion on January 10."* *"This is Stoutner: Objection: hearsay."*



Attorneys may also ask questions aimed at whether a party is recording as only the Court is allowed to record the proceedings.

- Most judges do not allow “blanket” admission of all exhibits, even if the attorneys start the hearing by stating that all may be admitted by stipulation. You will need to refer to each exhibit as part of your examinations, and move for admission of each exhibit during your examination.
- Objecting to questions will probably require interrupting. The court will be unable to see body language (like standing up) to indicate that someone is going to object. Objections to offered exhibits should be easier, as the judicial officer will likely ask for a statement of objection or “no objection”.
- Depending on the circumstances, it may be appropriate to ask questions of a witness to ensure they are in good health. This is similar to the exchange that you might have with a deposition witness. An example might say: *"Are you feeling well today? Have you experienced any recent concerns about your health that could affect your ability to understand or enter into this agreement?"*
- During a witness examination, attorneys may find it appropriate to establish that the witness is answering the questions himself or herself and not using a chat service during testimony or other assistance. These questions may include: *"Is anyone with you? Has anyone provided you with answers today? What writings or documents, other than the exhibits, do you have in front of you?"* Attorneys may also ask the judge to admonish the parties at the beginning of the hearing that they are not to communicate with others during their testimony by any means (text, chat, or in writing), nor are they to read from documents unless the document is a marked exhibit that they are asked to review.





- Attorneys may also ask questions aimed at whether a party is recording as only the Court is allowed to record the proceedings. If anyone is recording the proceedings, all parties and the court should know about it.
- As it stands now, a telephonic hearing with an interpreter will be difficult. Keep in mind that additional time is needed for telephonic or virtual hearings with interpreters. If you need to conduct a hearing in which your client needs an interpreter, consider whether an interpreter in the same room as your client is a possibility, or whether having an interpreter on a separate line would work. The logistics in dealing with an interpreter in addition to the telephone or virtual technology issues may require that you request an in-person hearing to protect your client's interests. The hope is that new technology will be developed to allow some sort of closed-captioning for the witness needing an interpreter during telephonic appearances.

**Litigating by telephone or online is a learning process** for everyone involved. The situation will literally be trial and error for some period of time. Judges will become more and more comfortable with the telephonic process or virtual process and will likely indicate their preferences in the orders setting these hearings. Client preparation for these hearings is more important than ever so that technology and communication issues don't interfere with what would ordinarily be important testimony. [FL](#)

## Meet The Authors



**ANNETTE T. BURNS** is in private practice in Phoenix, Arizona. She is a certified specialist who focuses her practice on family law, mediation, arbitration, special-master work, and parenting coordination.



### **NICOLE SIQUEIROS-STOUTNER**

is the managing partner at the firm Sheldon & Stoutner, and has practiced family law in Arizona since 2007. She is a court-appointed Parenting Coordinator, a judge pro tem, and a private mediator. Nicole is learning to work remotely using zoom.us, and appreciating the virtual backgrounds which mask her six-year-old dancing during each web-conference.

## top 6 things parents need to know about the COVID-19 stimulus pkg

On March 27, 2020, Congress passed the Coronavirus Aid Relief & Economic Security Act (CARES Act). The Act provides millions of Americans with financial relief to assist them during the COVID-19 pandemic. Below are the top 6 takeaways for parents:



### Q: Who will get a stimulus payment?

**S** **INGLE PERSON FILERS**, residents who have a 2019 Adjusted Gross Income (AGI) of \$99,000 or less, as well as...

Head of household filers who earned under \$146,500 in 2019.

▼  
The amount you receive depends on your 2019 federal tax filing, your AGI, and the number of children you claimed on the return.

### Q: How much will the stimulus payment be?

**THE AMOUNT YOU RECEIVE** depends on your 2019 federal tax filing, your AGI, and the number of children you claimed on the return. For those of you who haven't filed for 2019, it will depend on your 2018 tax filing. Generally, the following applies:

- a. The maximum amount for each adult is \$1,200.
  - i. Single person filers who have an AGI of \$75,000 or less will receive the maximum amount. The amount decreases until your AGI reaches \$99,000 when it phases out completely.
  - ii. Head of household filers who have an AGI of \$112,500 will get the maximum amount. The amount decreases until your AGI reaches \$146,500 when it phases out completely.
- b. The amount for each child 16 years of age or younger is \$500. Minors who are 17 are not eligible.

### Q: What if you've been divorced for some time?

**IF YOU'VE BEEN DIVORCED** for a while and you didn't file jointly in 2018 or 2019, you should receive your own stimulus check (see No. 2.a. above). However, the stimulus payment for each child will be



made to the parent who claimed that child on his/her 2019 or 2018 tax return, which may result in an inequitable division of the stimulus payment(s).

## Q: What are the new rules regarding retirement withdrawals/loans?

**IN ADDITION** to the stimulus payment, the Act relaxed rules on retirement withdrawals and loans if taken within a strict time period:

- a. The 10% penalty for early distributions of retirement funds up to \$100,000 may be waived under certain circumstances. The taxpayer will still be taxed on the distribution, but no longer penalized.
- b. The amount a taxpayer may borrow from his/her 401K increased from \$50,000 to \$100,000. Be sure to consult your tax expert regarding these rules.

## Q: What if you are recently divorced?

**THIS CREATES** two potential issues:

- a. If you recently divorced and your last tax filing was a joint return, your stimulus payment may be made

to the direct deposit account on your last tax filing. This account may have been awarded to one party in the divorce or to an account that no longer exists.

- b. The amount paid on behalf of the child(ren) may be also deposited into that account, or may be directed to a parent not caring for the children.

## Q: What if you are divorcing right now?

**THE AGE-OLD ATTORNEY ANSWER:** It depends. While tax refunds earned during the marriage would normally be considered a marital asset to be equitably divided between the parties, the stimulus payments aren't exactly a tax refund. Rather, these payments are defined as a tax credit that are primarily designed to provide relief to those who have been hard-hit financially during the COVID-19 pandemic. Thus, how these payments are divided between parents will depend on the facts presented in each case.

While we are pleased that parents will soon find some financial relief as a result of the passage of the CARES Act, we have little doubt that the Act will cause litigation between parties fighting over the stimulus payments, especially as such payments relate to those received for children. The family law practitioner must be aware of the specifics of the Act as they relate to our current and former clients. [FL](#)



**MARISSA SITES** is an Associate Attorney practicing in family and juvenile law. Her stay-at-home survival kit includes virtual dinners with family, virtual happy hours with her girlfriends, and a steady stream of MSNBC, Netflix and Dj D-Nice's Club Quarantine.



**LAURA BELLEAU** is a certified family law specialist, fellow in the American Academy of Matrimonial Lawyers (AAML) currently serving as a Vice President in that organization, and diplomate in the American College of Family Trial Lawyers (ACFTL). She is surviving having her college freshman unexpectedly home before June and home-schooling her 17 year son with lots of yoga and virtual happy hours.



# Notarization and Social Distancing

...you will have to decide where to send your client and whether safeguards can or will be put in place to protect your client, your law firm, and yourself from any unnecessary exposure to COVID-19.

# A

**S MANY ATTORNEYS** have surely encountered, in the practice of family law, certain documents require notarization. Arizona’s notary laws require the “presence” of the document signer at the time of the

notarization. A.R.S. §41-313(B)(1). Navigating through the “presence” requirement during our national health emergency caused by COVID-19 may seem daunting as most of us are observing social distancing and stay-at-home recommendations. In addition, it seems like every week, Governor Ducey releases a new Executive Order. Some states have issued temporary emergency orders that loosen up that “presence” requirement; unfortunately, Arizona is not one of those states. Not now at least. It comes as no surprise then that we end up questioning whether we have any safe options



to get our family court documents signed, but we do. First, a quick recap on what must be notarized.

The documents which require notarization are specified in Rule 14, Arizona Rules of Family Law Procedure, and they are: (1) an acceptance of service, (2) an affidavit in support of an application for default decree, (3) a consent decree, and (4) a stipulation that substantially changes legal decision-making or parenting time. If you do not have one of these documents, then an unsworn declaration will suffice and Rule 14(b) will tell you what that looks like.

Once you have determined your document requires notarization, you will have to decide where to send your client and whether safeguards can or will be put in place to protect your client, your law firm, and yourself from any unnecessary exposure to COVID-19. When we think of getting our documents notarized, we typically send a client to the bank, a UPS store, or have them come into the law firm and sign with a paralegal, right? These options have become handicapped by COVID-19 because everyone has modified their business operations to accommodate the social distancing guidelines, so where and how can your client sign and notarize that Consent Decree? Governor Ducey's Executive Order 2020-18 ("EO") released on March 30, 2020, issued a "stay at home policy" to combat COVID-19. Under this policy, all individuals shall limit their time away from their home/property, unless and except to conduct




▲  
The documents which require notarization are specified in Rule 14, Arizona Rules of Family Law Procedure,...

or participate in "essential activities." EO(2)(a). One of the essential activities includes "engaging in ...any court or legal process provided that such is conducted in a manner that provides appropriate physical distancing to the extent feasible." EO(4)(f). Places like the local bank and a UPS are still considered to perform "essential functions," so they remain open for now. If your client is planning to use a bank notary, call ahead as most banks have reduced their business hours. In addition, many banks have closed the main lobby but will render notary services on a "case by case" basis and by appointment only. UPS has normal business hours; they are still providing notary services and recommend an appointment to ensure that they are staffed on the requested day. The complete list of other businesses that qualify as performing an "essential function" can be found in Executive Order 2020-12.

If your client's driver's license has expired, Governor Ducey's EO 2020-08 allows notaries to accept expired driver's licenses.



For any elderly clients or clients with health conditions where being out in public should be avoided, mobile notaries are still operational. In addition, Senate Bill 1030, effective July 1, 2020, will modify A.R.S. §41-371 to provide “remote online notarization” such that the entirety of the notarization process is electronic.

The landscape in which we practice family law is more dynamic now than ever before. It is important to remind your clients and staff to stay informed and up to date with changes in these executive orders. Perhaps most importantly, your clients and staff should be reminded to strictly observe social distancing no matter how they get the document signed. 



**HEIDI A. LUKACSIK** has served Arizona families exclusively in the area of family law for the past 13 years. Ms. Lukacsik is a native of the Midwest having graduated from Indiana University School of Law in 2005. For the past 2 years, Ms. Lukacsik's practice expanded to include court appointments to serve family court as a Best Interest Attorney to minor children.

## Do We Have Any Safe Options to Get Court Documents Signed? We Do...

THESE OPTIONS HAVE BECOME HANDICAPPED BY COVID-19 BECAUSE EVERYONE HAS MODIFIED THEIR BUSINESS OPERATIONS TO ACCOMMODATE THE SOCIAL DISTANCING GUIDELINES... GOVERNOR DUCEY'S EXECUTIVE ORDER 2020-18 ("EO") RELEASED ON MARCH 30, 2020, ISSUED A "STAY AT HOME POLICY" TO COMBAT COVID-19. UNDER THIS POLICY, ALL INDIVIDUALS SHALL LIMIT THEIR TIME AWAY FROM THEIR HOME/PROPERTY, UNLESS AND EXCEPT TO CONDUCT OR PARTICIPATE IN "ESSENTIAL ACTIVITIES." EO(2)(A). ONE OF THE ESSENTIAL ACTIVITIES INCLUDES "ENGAGING IN ...ANY COURT OR LEGAL PROCESS PROVIDED THAT SUCH IS CONDUCTED IN A MANNER THAT PROVIDES APPROPRIATE PHYSICAL DISTANCING TO THE EXTENT FEASIBLE." EO(4)(F). PLACES LIKE THE LOCAL BANK AND A UPS ARE STILL CONSIDERED TO PERFORM "ESSENTIAL FUNCTIONS," SO THEY REMAIN OPEN FOR NOW.



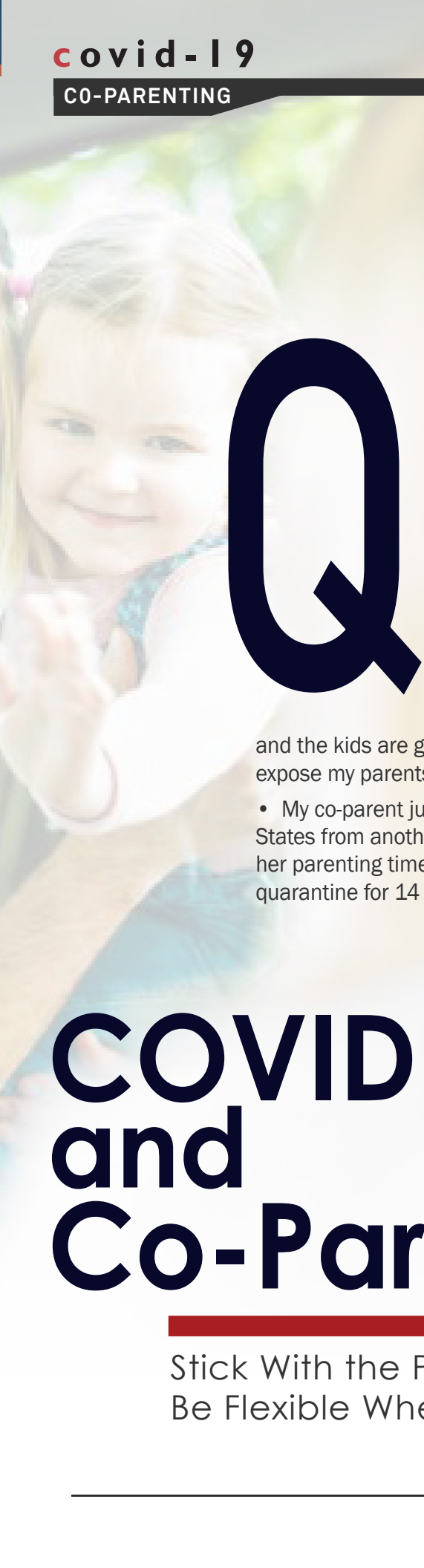
**For a current list of Executive Orders,** you can find them at:  
<https://azgovernor.gov/executive-orders>

**For updates on statewide changes** and recommendations to notary laws, you can go to:  
<https://www.nationalnotary.org/notary-bulletin>

**For a copy of Senate Bill 1030** and A.R.S. §41-371, you can go to:  
<https://www.azleg.gov/legtext/54leg/1R/bills/SB1030S.pdf>  
and:  
<https://www.azleg.gov/arstitle/>

▲ It is important to remind your clients and staff to stay informed and up to date with changes in these executive orders





# Q

## QUESTIONS WE'VE ALL BEEN HEARING

about parenting in our new Coronavirus-19 environment include:

- My co-parent isn't keeping our kids away from other kids during his parenting time. We live with my elderly parents and the kids are going to come back and expose my parents. Can I withhold the kids?
- My co-parent just got back to the United States from another country, and wants to start her parenting time. I think she should have to quarantine for 14 days first.

- My co-parent and I are both off work and I want to take care of my kids half the time, but she won't let me until it's officially my parenting time over the weekend. Why can't we share the time they have off school?
- My co-parent still thinks he's going to take the kids on vacation, out of state. I'm afraid if they leave the area, they can't come back for a while, so I want to prevent all travel.
- My co-parent isn't doing any homework/ school work with the kids even though we're supposed to be home-schooling until classes start again. The kids are falling way behind. Can I keep the kids during all school days to make sure their work is done?
- I have supervised visitation ordered, but all the supervision providers' offices have closed and I can't find a supervisor. Can't I have unsupervised time?

There are no easy answers to these questions, but you and your clients should know that you're not the only ones facing these issues. There may have never been a time, during our lifetimes, when separated/divorced parents have been more alone to work out completely new situations. Lawyers don't have answers;

# COVID and Co-Parenting:

Stick With the Plan,  
Be Flexible When You Can



the courts don't have answers, and courts also aren't going to be able to get around to resolving most parenting disputes for months. Court systems in general have shut down for all but the most extreme emergency matters, and none of the situations listed above would be considered emergencies. The court's definition of "emergency" has changed drastically in the last few weeks.

What co-parents can do is think and try to **make responsible decisions**. For some of the situations listed above, the dispute is a difference in parenting: while you and I and the next 20 people in the world might not consider letting our children be around lots of people right now, if the parent's actions are not against the law and not in violation of a government stay-at-home order, then whatever they're doing is a parenting decision. Some of the situations (the parenting time and vacation scenarios) involve something that's covered by a court order or Parenting Plan, but one parent thinks the Plan shouldn't apply because things are different now. The situation regarding supervised parenting time is a court order, but there are no facilities available to implement that order.

No one's going to disagree: things ARE different now. But relying on the existing Plan or court order is the only certainty parents and their children have right now. Unless both parents agree they want to change things, modifications of parenting time and Plan provisions aren't practical right now. Parents need to be told: **Stick with the Plan**, but **be flexible when you can**.


Perhaps the best way to address parent disagreements right now is early, quick mediation, done by Zoom or other online portal. Mediation may be the breaker that's needed for the parental logjam, and mediation allows for reasonable and measured conversation about these difficult issues, with input from a neutral third party. The parents may want to appoint an arbitrator or parenting coordinator to make certain decisions if they absolutely can't agree. Under Arizona's current laws, a Family Law (Special) Master cannot be appointed to resolve parenting time disputes. (See Rule 72, ARFLP.)

In order to consider solutions to problems



▲ No one's going to disagree: things ARE different now. But relying on the existing Plan or court order is the only certainty parents and their children have right now.

your clients are having with co-parenting, consider the Guidelines which were developed by a joint effort of AFCC, AAML, and NCJFCJ, which can be found in the Resources section of this Newsletter. The Guidelines have common themes: **Think. Communicate. Try to understand**. More than likely, there are no right answers to the questions our clients have. Parents should talk these problems through with their lawyers and other trusted advisors, and should try to talk them through with the co-parent. It's almost a certainty that parents are going to have to come up with compromises with the co-parent, using the court orders and Parenting Plan as a starting point.

In addition, you can also find guidelines from the State of Oregon and Pima County Superior Court in the Resources section of this Newsletter. Consider providing these guidelines to clients to show what courts are likely to do when courts are more available to us again. The Association of Family and Conciliation Courts has also compiled resources to help parents, and they are posted and will be updated at AFCC's website: [www.AFCCnet.org](http://www.AFCCnet.org) 

### About the Author

**ANNETTE T. BURNS** is in private practice in Phoenix, AZ. She is a certified specialist who focuses her practice on family law, mediation, arbitration, special-master work, and parenting coordination.





IT'S ALWAYS IMPORTANT TO **STAY IN TOUCH** WITH YOUR CLIENTS, BUT IN **DIFFICULT TIMES** LIKE THESE, CLIENT **COMMUNICATION** BECOMES ABSOLUTELY **CRITICAL**.

# USEFUL *client* LETTERS

***Communicating with clients is key*** at this difficult time. It alleviates stress and anxiety, and also instills confidence in your representation during these dynamic circumstances. In an effort to provide a few examples of helpful communications drafted by attorneys, we provide the following which may be used as forms or drafts in your own practice.

▶  
\*Please note that you will need to adjust these letters to fit your practice. For example, e-filing may not be available in every jurisdiction and the letters should be modified accordingly.





...I WAS APPROACHED BY ONE PARENT WITH "**CONCERNS**" THAT WERE, TRANSPARENTLY, **A LAND GRAB** FOR THE CHILD.

**i**

**IN MY CAPACITY AS BOTH**

a Best Interests Attorney and as an attorney regularly representing parents in

▶ custody matters, I have received a number of inquiries from concerned parents about how to handle a shared parenting schedule in the face of the current COVID-19 pandemic and stay-at-home orders. In one particularly contentious case in which I represent the best interests of the child, I was approached by one parent with “concerns” that were, transparently, a land grab for the child. This letter is a variation of a letter sent to both parents that may be useful to you in developing written guidance for your clients who, I am sure, have been contacting you as well with concerns.



**CLAUDIA D. WORK** is a 1992 graduate of the University of New Mexico School of Law. Her practice focuses primarily on all aspects of family law, including protecting and enforcing the rights of unmarried opposite and same sex couples and their children at all stages of their relationships, and family formation through Assisted Reproductive Technologies. Ms. Work frequently works as a Court Appointed Advisor and a Best Interests Attorney in Family Court.



## EXAMPLE 1: BEST INTERESTS

### ATTORNEY LETTER TO PARTIES

**BY CLAUDIA D. WORK, ATTORNEY AND**  
**BEST INTERESTS ATTORNEY**  
**CAMPBELL LAW GROUP OF ARIZONA, PLLC**

Be aware that stay at home orders do not mean that children do not have the right to spend time with both parents under current parenting plans, and maintaining as much normalcy as possible is more important now than ever for your child. Recognizing that you may have concerns about how the other parent is addressing the virus within his or her own home, please remember that both parents are presumed to be doing their best to limit possible exposure to COVID-19 in their households. As such, I would expect you both, as co-parents, to do the following:

- Practice and enforce good hygiene for yourselves, your child, and any other household members, to include regularly sanitizing frequently touched surfaces with soap and water or disinfectant if you have it, as well as enforcing frequent hand washing for 20 seconds.
- Limit social contacts and maintain social distancing (6 feet) as advised by medical professionals.
- Have your child avoid contact with any ill family or friends (assume any cold symptom could be COVID-19). This means avoid **PHYSICAL** contact and close proximity as much as possible (don't hang out in the same room).
- Have your child avoid playing on public playground equipment or with toys that are shared with other, non-household members such as jungle gyms, sandboxes, shared toys at daycare if the child is still attending daycare.
- Avoid play dates, but let your child call or have video sessions with friends or family as appropriate.

I also highly recommend that you work through Our Family Wizard to agree on a home-schooling schedule so that your child has consistency in both homes. For instance, agreeing on what lessons to do each day, how long before breaks, etcetera. You should also share information about where your child is doing well and what your child is struggling with so the other can work with him also, if necessary. Each of you will have a different manner of explaining concepts, so just because your child has trouble learning a concept from one parent does not mean the other should not try his/her own approach.

This time should be used not only to see if you both can stop the cycle of animosity between you, but also to demonstrate to your child, the judge and everyone else looking in that you can work cooperatively in your child's best interests. Your child will need both of you to stay healthy physically and become mentally/emotionally healthy, particularly now that his social outlets have been taken from him (school and friends).

I encourage you each to share anything that you find your child enjoys or positively responds to while you are each navigating this strange, new parenting environment. My sincere hope is that you will both have a breakthrough and realize the harm that the constant finger pointing is causing to your child, and will figure out how to convey to him that he can have a relationship with you both and that you will both be okay with that.

Please let me know if you have any questions or any additional suggestions as I don't profess to be the expert in co-parenting through a pandemic (*remember to copy the other parent!*)



## EXAMPLE 2: LETTER TO CLIENT

### BY NICOLE SIQUEIROS-STOUTNER

### SHELDON & STOUTNER



Hello:

Almost daily *(firm name)* is receiving questions regarding how to navigate the challenges associated with the COVID-19 pandemic, the Court, and our office. We want to make every effort to answer these questions in support of our clients. This message is based on the information available as of the date of this e-mail.

#### Working with Our Firm:

*(firm name)* is open, and still serving family law clients during this difficult time. We are moving forward with a strategy of preparedness, action and togetherness - as a firm and a family. We are taking measures in order to mitigate the risk to our clients, vendors, staff, and attorneys, but these measures will not disrupt our commitment to providing quality family law representation. As of last week, our Firm is conducting business through e-mail, telephone, and zoom.us video conferencing. At times we are working from the physical office and accepting documents from our outside in-box. However, when we are at the office, we are not permitting visitors to physically access our Firm. At other times, some or all attorneys and staff may work from home. We are continuing to practice law and want you to know that you can rely on us during these dynamic circumstances.

#### The Courts and Hearings:

The Superior Court is making sweeping changes regarding the COVID-19 pandemic. The Administrative Order No. 2020-055 issued on April 1, 2020 by Maricopa Presiding Judge Welty provides guidance as to how the Superior Court is going to move forward. From April 1, 2020 to April 30, 2020, family court **in-person** hearings will be limited to contested Order of Protection hearings, and hearings related to emergency orders. These hearings will occur at the Downtown Courthouse only, although it appears video conferencing may also be available to alleviate any physical attendance at a hearing. All other hearings will be continued or converted to telephonic or video hearings. The Family Court is also limiting who may access and how they may access the Court's buildings. In-person filing will only be available at the Downtown Courthouse, and e-filing will still be available. The Court may also review motions and enter orders during this closure. Court imposed deadlines have not been changed unless a hearing date has been changed. So, please continue to cooperate with us to ensure we meet all deadlines in your case.

This temporary closure does not mean that a party has leave to violate any provisions in present orders, a parenting time plan, or a decree, **unless** they have been advised by an attorney to do so or have a written agreement from the other parent. Please continue to follow all decrees and orders in your case. When the courts reopen, enforcements and contempt hearings regarding court order violations will occur. Violators of family law orders may face sanctions for failing to follow the terms of a court order, especially during a national emergency.



The duration of this Administrative Order may be extended as COVID-19 issues evolve. If you have an in-person hearing **after** April 30, 2020, these hearings may still be continued or converted to a telephonic hearing by the Court's own motion. Or, upon motion of one or both parties. If you have a hearing or trial in April or May, please contact our office by telephone or e-mail to discuss this hearing. We will also update you as we receive information regarding future hearings, future deadlines, and further closures.


### **Co-Parenting:**

Most divorced or separated families in Arizona have a court-ordered parenting plan. Given the COVID-19 crisis and the Shelter-in-Place Order, it may seem that the natural solution for the children is to stay with whichever parent has them right now and to stop exchanges. That is not the case. In Arizona, there has not been a law or other policy implemented which modifies parents' parenting plans. The reality is that parenting plans are **STILL IN PLACE** and are **STILL COURT ORDERS**. They must be followed unless the parents agree otherwise (preferably in writing and with advice of counsel). The hope is that the Chief Justice of the Arizona Supreme Court will issue statewide guidance regarding following parenting orders in light of COVID-19 concerns, and we will notify you if these are issued.

In following your parenting plan, you may encounter a situation in which the parenting plan cannot be followed due to new changes implemented because of the virus. As an example, a parenting plan may require the parties to exchange their children at schools, which are now closed. In this scenario, the best advice is to exchange at the time school would have started or ended. Exchanges should still occur at the school premises or at another agreed upon public location. Communication is key, and parents need to make every effort to find a solution that follows the intent of their plan. Please write and save all communications with the other parent.

COVID-19 concerns may also arise in other circumstances. A parent may be concerned that the other parent is not implementing appropriate social distancing or other sanitization measures for their children or themselves. At this point, there are no orders in place that force parents to stay in their homes with their children, as the Stay-at-Home order contains many exceptions including for groceries, physical exercise, and essential services. Parents who have concerns should communicate them as civilly as possible to the other parent in writing, and the hope is that the other parent will acknowledge those concerns and make changes. But unfortunately, there is no current remedy available for parents to force certain COVID-19 related measures on the other parent. This may change. We encourage you to bring your concerns to us and to document them at every step.

(*firm name*) is available to assist you in addressing and/or communicating emergent co-parenting issues related to COVID-19. Please contact us if you need our help.

On behalf of (*firm name*), we wish you and your family health and safety. We encourage you to stay informed about the virus. Please follow all current guidance from the CDC and the government, and contact your healthcare provider with questions about your health. We thank you for your trust in our Firm and we look forward to continuing to serve you. 



\*Please note that you will need to adjust these letters to fit your practice. For example, e-filing may not be available in every jurisdiction and the letters should be modified accordingly.



**NICOLE SIQUEIROS-STOUTNER** is the managing partner at the firm Sheldon & Stoutner, and has practiced family law in Arizona since 2007. She is a court-appointed Parenting Coordinator, a judge pro tem, and a private mediator. Nicole is learning to work remotely using zoom.us, and appreciating the virtual backgrounds which mask her six-year-old dancing during each web-conference.

# HELPFUL ONLINE RESOURCES



## AZ JUDICIAL BRANCH

[HTTPS://WWW.AZCOURTS.GOV/COVID19/](https://www.azcourts.gov/covid19/)

Information and updates from Superior Courts in less populous Arizona counties.



## MARICOPA SUPERIOR COURT

[HTTPS://SUPERIORCOURT.MARICOPA.GOV/COVID-19/](https://superiorcourt.maricopa.gov/covid-19/)

**Judge Bruce Cohen**, the Presiding Family Department Judge in Maricopa County Superior Court, graciously provided the following website which contains the most up-to-date information about changes taking place in the Maricopa County Family Court. When reviewing this information, please be mindful of the dates of each entry as plans are constantly evolving.



## PIMA COUNTY SUPERIOR COURT

[HTTPS://WWW.SC.PIMA.GOV/](https://www.sc.pima.gov/)

[HTTPS://WWW.SC.PIMA.GOV/PORTALS/0/LIBRARY/FAMILY\\_LAW\\_GUIDELINES.PDF?](https://www.sc.pima.gov/portals/0/library/family_law_guidelines.pdf?)

The above websites contain the most up-to-date information about changes taking place in the Pima County Family Court. When reviewing this information, please be mindful of the dates of each entry as plans are constantly evolving.

[HTTPS://WWW.SC.PIMA.GOV/PORTALS/0/LIBRARY/PARENTINGPLANS.PDF?](https://www.sc.pima.gov/portals/0/library/parentingplans.pdf?)

Pima County's Guidelines for Parenting Plans During COVID-19 can be found above.





## PINAL COUNTY SUPERIOR COURT

[HTTPS://WWW.PINALCOUNTYAZ.GOV/JUDICIAL/PAGES/COVID-19INFO.ASPX](https://www.pinalcountyaz.gov/judicial/pages/covid-19info.aspx)

The above website contains the most up-to-date information about changes taking place in the Pinal County Family Court. When reviewing this information, please be mindful of the dates of each entry as plans are constantly evolving.



## YAVAPAI COUNTY SUPERIOR COURT

[HTTPS://WWW.AZCOURTS.GOV/PORTALS/216/PANDEMIC/040120YAVAPAIFAMILYLAW.PDF?](https://www.azcourts.gov/portals/216/pandemic/040120yavapaifamilylaw.pdf?)

The above press release contains the most up-to-date information regarding Yavapai County family court. When reviewing this information, please be on the lookout for more current information as our situation is ever-changing.

## ADDITIONAL RESOURCES AND INFORMATION



### THE ASSOCIATION OF FAMILY AND CONCILIATION COURTS

[HTTPS://WWW.AFCCNET.ORG/CORONAVIRUS](https://www.afccnet.org/coronavirus)

COVID-19 Resources and Information Website

### ARIZONA BAR FOUNDATION (AZLAWHELPORG)

[HTTPS://COVID19.AZLAWHELP.ORG/FAMILY-LAW](https://covid19.azlawhelp.org/family-law)

Important Legal Information & Updates related to Family Law and COVID-19





## ANSWERS TO COMMON FAMILY LAW QUESTIONS: COVID-19

[HTTP://WWW.JABURGWILK.COM/COVID](http://www.jaburgwilk.com/covid)

Answers to Common Family Law Questions Regarding the COVID-19 Crisis Offered by Jaburg & Wilk



## OUR FAMILY WIZARD

[HTTPS://WWW.OURFAMILYWIZARD.COM/OFW-CLIENT-TOOLS-COVID-19](https://www.ourfamilywizard.com/ofw-client-tools-covid-19)

Tools for Clients during the COVID-19 Crisis



## BRIDGES ACADEMY

[HTTPS://BRDGESACADEMY.COM/COURSES/JOIN-ZOOM-PRIMER-FOR-MEDIATORS-AND-ARBITRATORS/](https://bridgesacademy.com/courses/join-zoom-primer-for-mediators-and-arbitrators/)

Bridges Academy offers on-line training courses on zoom.us web conferencing which are specifically geared towards lawyers, arbitrators, mediators, attorneys, and other advocates. The educators include Arizona faculty, specifically Judge Kenneth Fields, ret. a former Maricopa County family court presiding judge.



## BLOG POST ON FAMILY LAW ISSUES: COVID-19

[HTTP://HEYANNETTE.COM/BLOG/](http://heyannette.com/blog/)

Blog Posts on Family Law Issues Related to the COVID-19 Crisis Offered by the Law Offices of Annette T. Burns



## US SMALL BUSINESS ADMIN. DISASTER LOAN ASSISTANCE

[HTTPS://COVID19RELIEF.SBA.GOV/](https://covid19relief.sba.gov/)

Federal Disaster Loans for Businesses, Private Non-profits, Homeowners and Renters [FL](#)



# LAST-MINUTE : INFORMATION

**Right now our world seems to be constantly changing and evolving. Here is some last-minute information that we have learned while drafting this Newsletter:**

- **Justice Brutinel just issued** Supreme Court Administrative Order 2020-58. It extends the deadline for completing CLE from June 30 to December 30, 2020. That may be welcome news for many, because... ▼

- **The Bar Convention** has been cancelled and a number of the CLEs that were planned for this Spring are now on hold.

- **In Maricopa County**, Judge Cohen anticipates issuing (4/2/2020) an AO (Maricopa County 2020-051) that officially suspends all in-person parent information programs and directs parents to complete the mandatory program online or through any virtual live program.


- **In Pima County**, in-person parent education programs were suspended effective 3/31/2020. Parents have authority to complete the parent education online through: [positiveparentingthroughdivorce.com](http://positiveparentingthroughdivorce.com) or [parentingchoice.com](http://parentingchoice.com). Parents do NOT have to request permission to complete the class online while in-person parent education is closed. Parents must file their certificate of completion. Once parents have filed their certificate of completion, they can request a refund for the in-person class through the Clerk's office.

- **In Pima County**, a party may apply for Orders of Protection using AzPoint. Further, in Pima County, the hearings on Order of Protection petitions are being held telephonically, so there is no need to come down to the courthouse; information about how to appear telephonically can be found here: [https://www.sc.pima.gov/Portals/0/Library/OOP\\_info\\_COVID\\_19b.pdf?](https://www.sc.pima.gov/Portals/0/Library/OOP_info_COVID_19b.pdf?) Contested hearings

are being addressed (whether telephonic or in-person) on a case-by-case basis.

- **Admin. Order No. 2020-59** issued by the Arizona Supreme Court on April 3, 2020 modifies Rule 14(a), Arizona Rules of Family Law Procedure. As a result, the Court may accept for filing any document identified in the aforementioned rule without notarization if they are accompanied by a photocopy of the filer's driver's license or other governmental identification card. The Order further permits the Court to accept for filing a motion to temporarily modify parenting time or child support under Rule 47 and 48, Rules of Family Law Procedure without an underlying petition if the basis for temporary relief is related primarily to COVID-19.

- **On April 3, 2020**, Maricopa County published the following guidelines for parenting time during this pandemic: <https://superiorcourt.maricopa.gov/media/6082/covid-19-and-parenting-plans-maricopa-county-revised-version-4-3-20.pdf>

- **The Arizona Supreme Court** issued parenting time guidelines on 4/6/2020. You can find them at: <https://www.azcourts.gov/Portals/216/Pandemic/COVID19ParentingPlans.pdf?> 

## 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/](http://www.azbar.org/sectionsandcommittees/sections/familylaw/familylawcaselawupdates/) 

Want to contribute to the next issue of Family Law News? ... If so, the deadline for submissions is June 21st, 2020.



Would you like to...

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

**WE WANT TO HEAR FROM YOU!**

PLEASE SEND YOUR SUBMISSIONS TO:

**ANNIE M. ROLFE, FAMILY LAW ATTORNEY**

Rolfe Family Law, PLLC  
2500 N. Tucson Blvd., Suite 120  
Tucson, Arizona 85716 | (520) 209-2550

[arolfe@rolfefamilylaw.com](mailto:arolfe@rolfefamilylaw.com)

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

Contact us!



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