



**Family Law:
A View From
The Bench**



Judge Bruce R. Cohen
And
Judge David B. Gass



East Valley Bar Association, January 21, 2011

Overview

1. Statutory factors to determine spousal maintenance.
2. Parenting Coordinators: Their authority and role.
3. *Andrew R. v. Arizona DES* and the Acknowledgment of Paternity under A.R.S. § 25-812.
4. Life insurance for the benefit of the other party.
5. Custody evaluation reports: What weight?
6. Presumptions: Equal Parenting Time and Custody
7. Family Court "Do's and Don'ts."
8. Court Rule Update.

**Spousal maintenance and
Statutory factors**

When the parties divorce, each leaves with a reservoir and a pool. A spillway connects the pools.

- The pools may not be the same size.
- The pools may need to get smaller.
- The goal is to close off the spillway by making sure that each party has a reservoir big enough to service the pool.

Spousal maintenance and Statutory factors

Case law: In determining the amount and duration, "the current aim [of spousal maintenance] is to achieve independence for both parties **and** to require an effort toward independence by the party requesting maintenance." *Schroeder v. Schroeder*, 161 Ariz. 316, 321, 778 P.2d 1212, 1217 (1989) (emphasis added).

Statute: The Court must consider the statutory factors of A.R.S. § 25-319(B).

Spousal maintenance and Statutory factors

The screenshot displays a list of statutory factors for spousal maintenance. The text is as follows:

THE COURT FINDS that in accordance with subsection (A) above, **Statutory Factor** is added to the list of statutory factors. The Court finds that the amount and duration of spousal maintenance is to be determined by the court and that the current aim of spousal maintenance is to achieve independence for both parties and to require an effort toward independence by the party requesting maintenance. *Schroeder v. Schroeder*, 161 Ariz. 316, 321, 778 P.2d 1212, 1217 (1989). Using the following factors, the Court must consider the statutory factors of A.R.S. § 25-319(B). These factors, along with the Court's findings based thereon, are as follows:

1. The standard of living established during the marriage.
Issue Finding:
2. The duration of the marriage.
Issue Finding:
3. The age, employment history, earning ability and physical and emotional condition of the spouse seeking maintenance.
Issue Finding:
4. The ability of the spouse from whom maintenance is sought to meet that spouse's needs while meeting those of the spouse seeking maintenance.
Issue Finding:
5. The comparative financial resources of the spouses, including their comparative earning abilities in the labor market.
Issue Finding:
6. The contribution of the spouse seeking maintenance to the earning ability of the other spouse.
Issue Finding:
7. The extent to which the spouse seeking maintenance has reduced that spouse's income or career opportunities for the benefit of the other spouse.


Spousal maintenance and Statutory factors

The screenshot displays a list of statutory factors for spousal maintenance. The text is as follows:

8. The ability of both parties after the dissolution to contribute to the future educational costs of their mutual children.
Issue Finding:
9. The financial resources of the party seeking maintenance, including marital property apportioned to that spouse, and that spouse's ability to meet that spouse's own needs independently.
Issue Finding:
10. The time necessary to acquire sufficient education or training to enable the party seeking maintenance to find appropriate employment and whether such education or training is readily available.
Issue Finding:
11. Economic or abnormal expenditures, destruction, concealment or fraudulent disposition of community, joint tenancy and other property held in common.
Issue Finding:
12. The cost for the spouse who is seeking maintenance to obtain health insurance and the reduction in the cost of health insurance for the spouse from whom maintenance is sought if the spouse from whom maintenance is sought is able to convert family health insurance to employee health insurance after the marriage is dissolved.
Issue Finding:
13. All actual damages and judgments from conduct that results in criminal conviction of either spouse in which the other spouse or child was the victim.
Issue Finding:

Spousal maintenance and Statutory factors

If the statute gives you a list of factors, why not talk about all of them in order?



By Jove!
I think I am onto something.

Parenting Coordinators

What is a parenting coordinator's role?

- Teach the parties to communicate and resolve conflict themselves.
- Resolve the issues that the parties cannot resolve.

What is a parenting coordinator's authority?

Acknowledgment of Paternity and Paternity Challenges

Andrew R. v. Arizona DES,
223 Ariz. 453, 224 P.3d 950 (Ariz. App. 2010)

When construing a challenge to paternity under A.R.S. § 25-812(E), the court must apply the Rule 60(c)(3) six-month time limit.

A.R.S. § 25-812(E) applies only to paternity established when the parties both execute a voluntary acknowledgement of paternity.

It stands as the law. It will control trial courts unless it is changed by the appellate courts.

Judge Weisberg dissented.

Life Insurance

Life insurance for the benefit of the other party.

Only if the parties agree, as in a Consent Decree or a Rule 69 Agreement.

If the parties agree and it is included in an order, the Court will enforce the requirement.

There might be some exceptional circumstance, but it would be very fact specific.

Custody Evaluation Reports

What is there evidentiary value?

How best to use them?

- Read them carefully. If you admit them, we will.
- Make sure that you have more to your case.

Parenting Time or Custody

Are there presumptions?

- A.R.S. § 25-403 makes the child's best interest the primary concern.
- A.R.S. § 25-103.B says:

It also is the declared public policy of this state and the general purpose of this title that absent evidence to the contrary, it is in a child's best interest:

1. To have substantial, frequent, meaningful and continuing parenting time with both parents.
2. To have both parents participate in decision-making about the child.

Do's and Don'ts

- DO treat everyone else in the courtroom, including court staff, with respect.
- DON'T interrupt each other during arguments.
- DO be prepared to ask for specific relief.
- DON'T just parrot the statutory language when asking for relief.
- DO prepare and submit a clear and concise pretrial statement.
- DON'T submit your exhibits late.

Do's and Don'ts

- If the statute includes a list of factors, DO cover each, even if it is to just point out that the factor does not apply.
- DON'T comment on an answer, and DON'T thank the witness for an answer.
- DO use signposts, such as telling the witness, "We are going to cover child support now."
- DON'T forget jurisdictional testimony.

Do's and Don'ts

DO remember that it is your client's life, not your life. Always maintain your professionalism.

DO be prepared.

Court Rule Update

**Rules 5.1, 47, 67(b), 69, 74 & 78, A.R.F.L.P.
R-09-0042**

Approved

Allows for temporary orders in non-parent custody cases

Establishes procedures for consolidating and transferring dependency and custody proceedings, and deferring jurisdiction

Allows court to appoint a judge pro tempore as a private mediator, who then may approve Rule 69 agreements and sign decrees (*In re Marriage of Reeder v. Johnson*, -- Ariz. --, -- P.3d --, 2010 WL 3339457 (Ariz. Ct. App. Div. 1, 2010))

Clarifies Rule 69 agreement procedures

Court Rule Update

**Rules 5.1, 47, 67(b), 69, 74 & 78, A.R.F.L.P.
R-09-0042
(Continued)**

Approved

Precludes counsel from attending parenting coordinator meetings

Provides that offers of judgment are not permitted in family cases

Court Rule Update

**Rule 6(E)(4)(e)(2), Rules of Protective Order Procedure
R-09-0045**

Rejected

Would have repealed as unconstitutional the provision authorizing a judicial officer to prohibit a defendant from possessing, purchasing, or receiving firearms and ammunition for the duration of an injunction against harassment

Court Rule Update

**Rule 1(D)(4), Rules of Protective Order Procedure
R-10-0013**

Rejected

Would have permitted the court to direct a defendant to remain in the courtroom for a period of time after the plaintiff is excused only in cases in which an order of protection or an injunction against harassment remains in force

Court Rule Update

**Rule 1(B)(1)(d), Rules of Protective Order Procedure
R-10-0014**

Rejected

Would have replaced the term "victim" in the rules with "plaintiff" or, in appropriate situations, "alleged victim"
