
ARIZONA ORDERS OF PROTECTION: WHAT YOU NEED TO KNOW.



Presenters

Nicholas Boca, Partner/Managing Family Law Attorney, Cantor Law Group

A Phoenix native, Nicholas Boca began his career as an Assistant Attorney General, representing the Department of Child Safety. In this position, he appeared in several hundred court hearings, mediations, and trials. After, Nicholas started with Cantor Law Group, where he now is the Managing Family Law Partner. As a Board-Certified Family Law Specialist, Nicholas' trial experience continues to build, handling extremely contentious custody matters and orders of protection, along with high-net-worth, complex, and high-profile cases. Nicholas is the past co-chair of the MCBA family law section and past chair of the Juvenile Law Section for the State Bar of Arizona.

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Rule 36. Admissible Evidence

(a) Relevant Evidence and Exclusions. The court must limit the scope of the hearing to the allegations of the petition. Relevant evidence is admissible provided, however, that the court may exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, undue delay, wasting time, needlessly presenting cumulative evidence, or lack of reliability.

(b) Reports, Documents, or Forms as Evidence. Any report, document, or standardized form required to be submitted to a court may be considered as evidence if either filed with the court or admitted into evidence by the court.



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Rule 38. Contested Hearing Procedures

- (a) Requesting a Hearing.** At any time while a protective order or a modified protective order is in effect, a defendant may request one hearing in writing. *See* A.R.S. §§ 13-3602(L), 12-1809(H), 12-1810(G).
- (b) Scheduling the Hearing.** A judicial officer must hold the hearing at the earliest possible time.
- (1) If an Order of Protection grants exclusive use of the residence, a judicial officer must hold a hearing within 5 court business days of the request. If exclusive use of a residence is awarded to the plaintiff, the court, on written request of a party, may hold additional hearings at any time if there is a change in circumstances related to the primary residence. *See* A.R.S. § 13-3602(L).
 - (2) For all other protective orders, a judicial officer must hold a hearing within 10 court business days of the request unless the judicial officer finds good cause to continue the hearing for a longer period of time.
- (c) Notice of Hearing.** The court must notify the plaintiff of the hearing. There is no statutory requirement for personal service of the hearing notice.

Rule 38 (continued).

Amendments to Petition



Youth court

(d) Amended Petition. At a contested hearing, if a plaintiff seeks to testify or present evidence about relevant allegations that were not included in the petition, the court must:

(1) allow the plaintiff to amend the petition in writing on a form provided by the court, a copy of which the court must immediately provide to the defendant; and

Rule 38d (cont.)

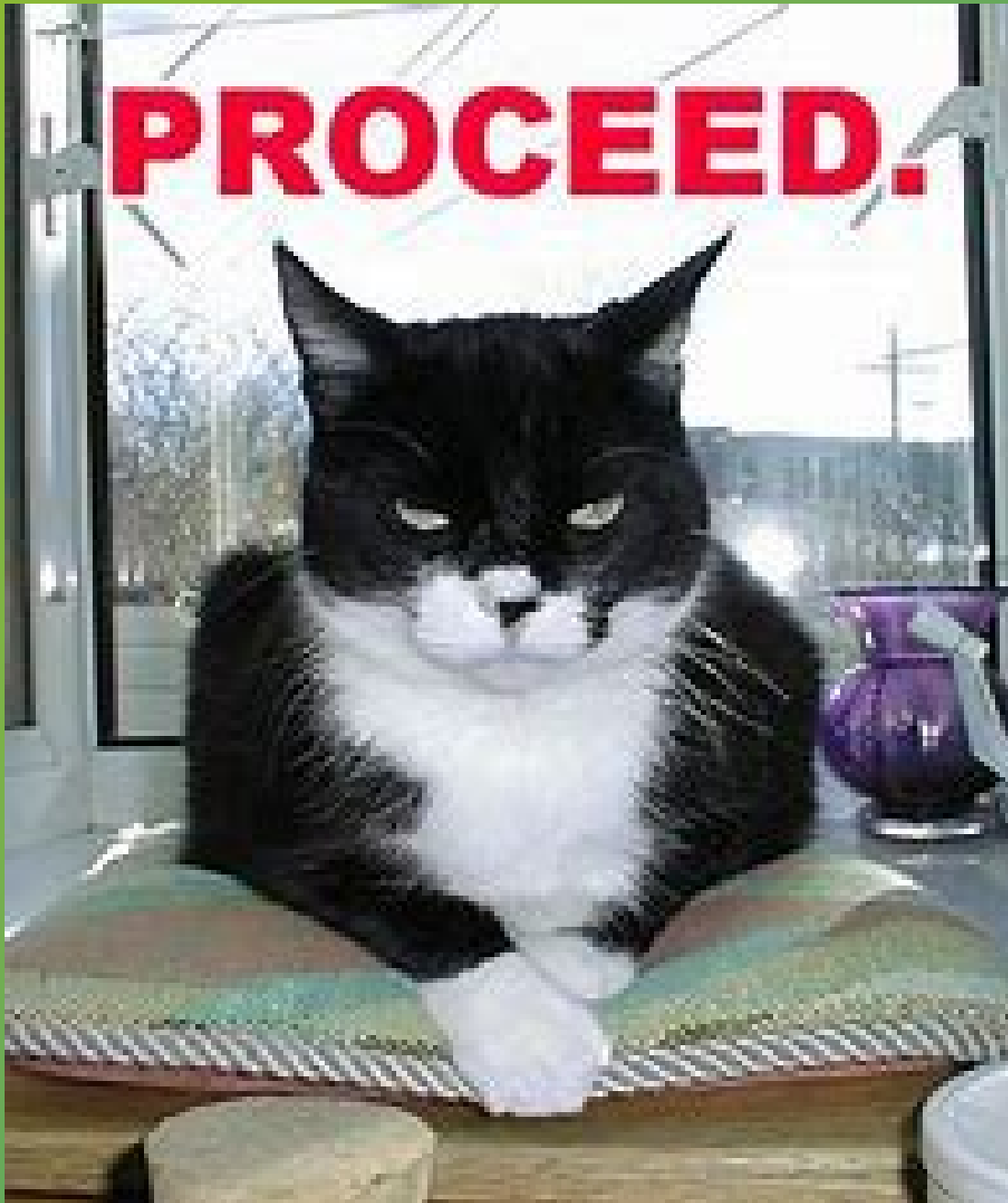
(2) offer the defendant each of the following options:

(A) a continuance of the hearing, within the timeframes specified by Rule 38(b), to allow the defendant the opportunity to prepare for the additional allegations; or

(B) a brief recess to allow the defendant the opportunity to review the amended petition and prepare for the additional allegations; or



Court takes a recess



Rule 38d (cont.)

(C) an explanation of the options above and an opportunity to waive them. If the defendant waives both the opportunity for a continuance or a brief recess, then the court must proceed with the contested hearing on the amended petition that includes the additional allegations.

Rule 38 (cont.)

(e) Court Security Measures. The court must take reasonable measures to ensure that the parties and any witnesses at the hearing are not subject to harassment or intimidation in the courthouse or on adjoining property. For each hearing, the judicial officer must determine whether there is a need to have a law enforcement officer or a security officer present to help ensure the hearing is orderly or to provide escort for either party. The court may direct the defendant to remain in the courtroom for a period of time after the plaintiff is excused.

(f) Appearance at the Contested Hearing.

- (1) *Defendant Fails to Appear.* If the plaintiff appears for the contested hearing and the defendant fails to appear, and the defendant received actual notice of the hearing, the protective order will remain in effect.
- (2) *Plaintiff Fails to Appear.* If the defendant appears for the contested hearing and the plaintiff fails to appear, and the plaintiff received actual notice of the hearing, the protective order will be dismissed.
- (3) *Neither Party Appears.* If neither party appears for the contested hearing, and each party received actual notice, the hearing will be vacated, and the protective order will remain in effect.

Rule 38 (cont.)



(g) Procedure. If both parties appear and a contested hearing is conducted, the following rules apply:

- (1) *Parties' Right to be Heard.* The judicial officer must ensure that both parties have an opportunity to be heard, to present evidence, and to call and examine and cross-examine witnesses.
- (2) *Oath or Affirmation.* The court must administer an oath or affirmation to all parties and witnesses at all hearings.
- (3) *Standard of Proof.* For a protective order to remain in effect as originally issued or as modified at a hearing, the plaintiff must prove the case by a preponderance of the evidence.
- (4) *Basis for Continuing, Modifying, or Revoking Protective Orders.* At the conclusion of the hearing, the judicial officer must state the basis for continuing, modifying, or revoking the protective order.
- (5) *Service of Modified Protective Order.* A modified protective order must be served on the defendant. Procedures for serving a defendant who is present in the courtroom are set forth in Rule 31(f)-(g).



Before the OOP is filed

- **Client's safety first:** If the client (Plaintiff) is in immediate danger they should contact the police and then file an OOP. Do they have a safety plan, and safety exit plan, a safe place to reside during this process?
- **Timeline:** Walk through the Plaintiff's entire relationship with the Defendant. Discuss events that occurred within the past year or within a longer period. Have Plaintiff tell you everything, because they may not understand what constitutes an act of domestic violence.
 - **Rule 23(e)(1)** To grant an *ex parte* Order of Protection, a judicial officer must find reasonable cause to believe that the defendant may commit an act of domestic violence or has committed an act of domestic violence within the past year or within a longer period if the court finds good cause exists to consider a longer period. Periods when a defendant was absent from the state or incarcerated are excluded from the one-year calculation.
- **Evidence:** Advise Plaintiff what evidence to gather and review the evidence. Ensure you are able to lay proper foundation for pictures, audio and video recordings. If you have time, obtain any police reports.
- **Witnesses:** Speak with the witnesses.

After the OOP is filed

- **Service: Rule 31(a):** A protective order can be served only by a person authorized by Rule 4(d), Arizona Rules of Civil Procedure, A.R.S. §§ 13-3602(K), 12-1809(S), or 12-1810(S) or as otherwise provided in this rule. Does not have to be served by law enforcement.
- **Rule 31(b):** Must be served within one year of being issued, or it will expire.
- **Amended/Modified Petition: Rule 31(e):** Must be served.
- **Rule 23(j) Effectiveness.** An Order of Protection takes effect when the defendant is served with a copy of the order and the petition. An Order of Protection that is served on or after September 24, 2022, is in effect for two years from date of service. An Order of Protection served before September 24, 2022, is in effect for one year from date of service. A modified Order of Protection takes effect upon service and expires the same date as the initial order upon which it is based.
- **Plaintiff:** Be ready to present your case. Evidence, exhibits, and witnesses, should already be prepped.
- **Defendant:** Before requesting a hearing, you must completely analyze Defendant's ability to challenge the OOP.
 - Request the FTR from when the Ex-Parte order was issued.
 - Request any police reports.
 - Timeline the whole relationship between Plaintiff and Defendant.
 - Carefully review and discuss with Defendant each of Plaintiff's allegations.
 - Get a criminal law specialist involved.

Request OOP to be heard in Superior Court and/or Joint Hearing with Temporary Orders

- **Yes**, if there is a pending Family Court Action, have the contested OOP hearing heard by Assigned Superior Court Judge.
- **Rule 5(a)(4) A.R.F.L.P.: Orders of Protection.** The court may not consolidate a case involving an order of protection with a family law case but **may** conduct a joint hearing.
- **Rule 34 (a) Superior Court Jurisdiction.** The superior court has exclusive jurisdiction to issue a protective order when a family law action is pending between the parties. A limited jurisdiction court must refer a plaintiff who has a pending family law action to the superior court. An action is pending if either:
 - (1) an action has begun but no final judgment, decree, or order has been entered, or
 - (2) a post-decree proceeding has begun but no final order determining that proceeding has been entered.
- **(b) Limitation on Limited Jurisdiction Courts.** A limited jurisdiction court cannot issue a protective order if the plaintiff's petition or other evidence reveal that an action for maternity, paternity, annulment, legal decision-making and parenting time, dissolution of marriage, or legal separation is pending in an Arizona superior court. Nevertheless, if a limited jurisdiction court does issue a protective order when an action for maternity, paternity, annulment, legal decision-making, legal separation, or dissolution of marriage is pending in superior court, the order is valid and effective.
- **(c) Transfer to Superior Court.** If, after issuance of a protective order, a limited jurisdiction court is notified in writing or verifies that a family law action is pending, the court must promptly transfer all documents relating to the protective order to the superior court.

Upholding

- **Primary Goals:** Of course the goal is to have the OOP upheld for your client (Plaintiff). Your other primary goal should be ensuring Plaintiff understands the contested hearing process as well as possible.
- **(Burden of Proof: Rule 38(g)(3):** For a protective order to remain in effect as originally issued or as modified at a hearing, the plaintiff must prove the case by a preponderance of the evidence.
- **Hearing Procedure:** Plaintiff's case and burden. Plaintiff will go first. Explain to Plaintiff, where they will sit, who will be in the Courtroom, how long the hearing is, how long they will have to present their case. Explain to Plaintiff, what objections may arise during the hearing, how the Judge may handle the objections, and your plan if a Defendant objection is sustained.
- **Testimony:** Prepare Plaintiff's testimony. Anticipate Defendant and Judge questions and practice cross-examining Plaintiff.
- **Audio/Video Evidence:** Have prepared the entire recording to play, along with just the relevant portion/clip. Make sure your electronic device is loud enough to be heard by the Judge, Defendant, and FTR. Practice playing just the clip with Plaintiff during testimony preparation.
- **Exhibits:** Properly label and bates stamp. Practice going through each Exhibit with Plaintiff, laying foundation.

Quashing

- **Request a contested hearing: Rule 38 (a):** At any time while a protective order or a modified protective order is in effect, a defendant may request one hearing in writing.
- **Request attorney's fees in writing: Rule 39 (a) Award.** After a hearing with notice to the affected party, a judicial officer may order any party to pay the costs of the action, including reasonable attorneys' fees, if any.
 - (b) Considerations.** In determining whether to award costs or attorney fees, the judicial officer may consider:
 - (1) the merits of the claim or the defense asserted by the unsuccessful party;
 - (2) whether the award will pose an extreme hardship on the unsuccessful party; and
 - (3) whether the award may deter others from making valid claims.
- **Burden of Proof: Rule 38(g)(3):** For a protective order to remain in effect as originally issued or as modified at a hearing, the plaintiff must prove the case by a preponderance of the evidence.
- **Criminal Investigation/Charges:** Get a criminal law specialist involved to determine if Defendant challenging the OOP during a hearing will help or hurt any criminal investigation or pending charges. Remember, this may be the only time ahead of a criminal proceeding that the Defendant is able to confront the Plaintiff. Otherwise prohibited under the Victim's Bill or Rights.

Quashing

- **Primary Goals:** Of course the goal is to have the OOP quashed for your client (Defendant). Your other primary goal should be ensuring Defendant understands the contested hearing process as well as possible.
- **Hearing Procedure:** Plaintiff's case and burden. Plaintiff will go first. Explain to Defendant, where they will sit, who will be in the Courtroom, how long the hearing is, how long they will have to present their case. Explain to Defendant, what objections may arise during the hearing, how the Judge may handle the objections, and your plan if a Plaintiff's objection is sustained.
- **Testimony:** Prepare Defendant's testimony. Anticipate Defendant and Judge questions and practice cross-examining Defendant.
- **Audio/Video Evidence:** Have prepared the entire recording to play, along with just the relevant portion/clip. Make sure your electronic device is loud enough to be heard by the Judge, Defendant, and FTR. Practice playing just the clip with Defendant during testimony preparation.
- **Exhibits:** Properly label and bates stamp. Practice going through each Exhibit with Defendant, laying foundation.

Before requesting a hearing, you must completely analyze Defendant's ability to challenge the OOP: Explain consequences

- **Criminal Incrimination:** Must consult with a criminal law specialist to determine if Defendant at risk of further criminal incrimination.
- If Children involved, must outline for Defendant the consequences of DV acts on Legal Decision Making Authority and Parenting Time.
- **A.R.S. § 25-403 (8).** Whether there has been domestic violence or child abuse pursuant to section 25-403.03.
- **A.R.S. § 25-403.03 (A).** Notwithstanding subsection D of this section, **joint legal decision-making shall not be awarded** if the court makes a finding of the existence of **significant domestic violence** pursuant to section 13-3601 or if the court finds by a preponderance of the evidence that there has been **a significant history of domestic violence**.
- **(B).** The court shall consider evidence of domestic violence as being contrary to the best interests of the child. The court shall consider the safety and well-being of the child and of the victim of the act of domestic violence to be of primary importance. The court shall consider a perpetrator's history of causing or threatening to cause physical harm to another person.
- **(D).** If the court determines that a parent who is seeking sole or joint legal decision-making has committed an act of domestic violence against the other parent, **there is a rebuttable presumption** that an award of sole or joint legal decision-making to the parent who committed the act of domestic violence is contrary to the child's best interests.
- **(F).** If the court finds that a parent has committed **an act of domestic violence**, **that parent has the burden of proving** to the court's satisfaction that parenting time will not endanger the child or significantly impair the child's emotional development. If the parent meets this burden to the court's satisfaction, the court shall place conditions on parenting time that best protect the child and the other parent from further harm.

OOP Petition Allegations and A.R.S. Title 13

- **A.R.S. § 13-3602 (E):** The court shall review the petition, any other pleadings on file and any evidence offered by the plaintiff, including any evidence of harassment by electronic contact or communication, to determine whether the orders requested should issue without further hearing. The court shall issue an order of protection under subsection G of this section if the court determines that there is reasonable cause to believe any of the following:
 1. The defendant **may** commit **an act of domestic violence**.
 2. The defendant **has committed an act of domestic violence** within the past year or within a longer period of time if the court finds that good cause exists to consider a longer period.
- **A.R.S. § 13-3601 (A):** "Domestic violence" means any act that is a dangerous crime against children as defined in section 13-705 or an offense prescribed in section 13-1102, 13-1103, 13-1104, 13-1105, 13-1201, 13-1202, 13-1203, 13-1204, 13-1302, 13-1303, 13-1304, 13-1406, 13-1425, 13-1502, 13-1503, 13-1504, 13-1602 or 13-2810, section 13-2904, subsection A, paragraph 1, 2, 3 or 6, section 13-2910, subsection A, paragraph 8 or 9, section 13-2915, subsection A, paragraph 3 or section 13-2916, 13-2921, 13-2921.01, 13-2923, 13-3019, 13-3601.02 or 13-3623...

A.R.S. Title 13

- **A.R.S. § 13-1102-1105: Homicide**
- **A.R.S. § 13-1201-1216: Assault**
- **A.R.S. § 13-1302-1304: Kidnapping**
- **A.R.S. § 13-1406 and 1425: Sexual Assault**
- **A.R.S. § 13-1502-13-1504: Criminal Trespass**
- **A.R.S. § 13-1602: Criminal Damage**
- **A.R.S. § 13-2810: Interfering with Judicial Proceedings**
- **A.R.S. § 13-2904 subsection A, paragraph 1, 2, 3 or 6: Disorderly Conduct**
- **A.R.S. § 13-2910: subsection A, paragraph 8 or 9: Cruelty to animals**
- **A.R.S. § 13-2915, subsection A, paragraph 3: Preventing use of telephone in emergency**
- **A.R.S. § 13-2916: Use of an electronic communication to terrify, intimidate, threaten or harass**
- **A.R.S. § 13-2921: Harassment**
- **A.R.S. § 13-2921.01: Aggravated harassment**
- **A.R.S. § 13-2923: Stalking**
- **A.R.S. § 13-3019: Surreptitious photographing, videotaping, filming or digitally recording or viewing**
- **A.R.S. § 13-3601.02: Aggravated domestic violence**
- **A.R.S. § 13-3623: Child or vulnerable adult abuse; emotional abuse**

A.R.S. § 13-1602: Criminal Damage

A. A person commits criminal damage by:

1. Recklessly defacing or damaging property of another person.
2. Recklessly tampering with property of another person so as substantially to impair its function or value.
3. Recklessly damaging property of a utility.
4. Recklessly parking any vehicle in such a manner as to deprive livestock of access to the only reasonably available water.
5. Recklessly drawing or inscribing a message, slogan, sign or symbol that is made on any public or private building, structure or surface, except the ground, and that is made without permission of the owner.

A.R.S. § 13-2915: Preventing use of telephone in emergency

(A)(3): Intentionally prevent or interfere with the use of a telephone by another person in an emergency situation.

E. For the purposes of this section:

- 1.** "Emergency" means a situation in which property or human life in jeopardy and the prompt summoning of aid is essential.
- 2.** "Emergency situation" means a situation in which both of the following apply:
 - (a)** Human health, life or safety is in jeopardy and the prompt summoning of aid is essential.
 - (b)** It is reasonable to believe that a domestic violence offense pursuant to section 13-3601 is being, has been or is about to be committed.

A.R.S. § 13-3019: Surreptitious photographing, videotaping, filming or digitally recording or viewing

A. It is unlawful for any person to knowingly photograph, videotape, film, digitally record or by any other means secretly view, with or without a device, another person without that person's consent under either of the following circumstances:

1. In a restroom, **bathroom**, locker room, **bedroom** or other location where the person has a **reasonable expectation of privacy** and the person is **urinating, defecating, dressing, undressing, nude or involved in sexual intercourse or sexual contact**.

2. In a manner that directly or indirectly captures or allows the viewing of the **person's genitalia, buttock or female breast, whether clothed or unclothed**, that is not otherwise visible to the public.

B. It is unlawful to disclose, display, distribute or publish a photograph, videotape, film or digital recording made in violation of subsection A of this section without the consent or knowledge of the person depicted.

C. This section does not apply to:

1. Photographing, videotaping, filming or digitally recording for security purposes **if notice** of the use of photographing, videotaping, filming or digital recording equipment is **clearly posted in the location** and the location is one in which the person has a reasonable expectation of privacy.

A.R.S. § 13-2810: Interfering with Judicial Proceedings

A. A person commits interfering with judicial proceedings if such person knowingly:

1. Engages in disorderly, disrespectful or insolent behavior during the session of a court which directly tends to interrupt its proceedings or impairs the respect due to its authority.
2. Disobeys or resists the **lawful order**, process or other **mandate of a court**.

A.R.S. § 13-2921: Harassment

A. A person commits harassment if the person knowingly and repeatedly commits an act or acts that harass another person or the person knowingly commits any one of the following acts in a manner that harasses:

- 1.** Contacts or causes a communication with another person by verbal, electronic, mechanical, telegraphic, telephonic or written means.
- 2.** Continues to follow another person in or about a public place after being asked by that person to desist.
- 3. Surveils or causes a person to surveil another person.**
- 4.** Makes a false report to a law enforcement, credit or social service agency against another person.
- 5.** Interferes with the delivery of any public or regulated utility to another person.

E. For the purposes of this section, "harass" means conduct that is directed at a specific person and that would cause a reasonable person to be seriously alarmed, annoyed, humiliated or mentally distressed and the conduct in fact seriously alarms, annoys, humiliates or mentally distresses the person.

A.R.S. § 13-3623: Child or vulnerable adult abuse; emotional abuse

D. A person who intentionally or knowingly engages in emotional abuse of a vulnerable adult who is a patient or resident in any setting in which health care, health-related services or assistance with one or more of the activities of daily living is provided or, having the care or custody of a vulnerable adult, who intentionally or knowingly subjects or permits the vulnerable adult to be subjected to emotional abuse is guilty of a class 6 felony.

(F)(3). "Emotional abuse" means a pattern of ridiculing or demeaning a vulnerable adult, making derogatory remarks to a vulnerable adult, verbally harassing a vulnerable adult or threatening to inflict physical or emotional harm on a vulnerable adult.

Criminal Investigation/Charges

- **Get a criminal law specialist involved.**
- **Can confront the victim under oath during the contested OOP hearing.**

Pre-Hearing Statement

- Not prohibited by the Rules.
- Provides a clear roadmap for the Judge.
- Outlines your argument for attorney's fees and costs.
- Con: Puts opposing party on advance notice regarding your arguments and evidence.

Thank you!

Nicholas Boca

Partner/Managing Family Law Attorney

Cantor Law Group

40 N. Central Ave.

Suite 2310

Phoenix, AZ 85004

nb@cantorlawgroup.com

(602) 254-8880