

GUIDE TO COURT CUSTOMER ASSISTANCE

**Legal Advice – Legal Information Guidelines for
Arizona Court Personnel**



**The Arizona Supreme Court
Task Force on
Legal Advice – Legal Information Guidelines**

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I. Introduction

Goal One in *The Strategic Agenda for Arizona's Courts 2005-2010* is to provide access to swift, fair justice. The initiative to “develop and adopt Supreme Court Guidelines defining legal assistance, as distinguished from legal advice” has been established by **Administrative Order No. 2006-40** to further this goal. See Appendix A. Accordingly, the Legal Advice – Legal Information Guidelines Task Force was established to develop and implement effective ways to assist court customers.

The Task Force mission is ***to develop standards distinguishing legal information from legal advice that enable Arizona court personnel to provide clear and consistent information about the court system for court customers, to present recommendations to the Arizona Judicial Council for adoption, and to further determine the best method for implementing the developed standards.***

With the increase of self-represented litigants in Arizona, the issue of how to provide assistance and information to court customers without giving legal advice is becoming more critical and urgent. Arizona court personnel, such as judges, clerks, bailiffs, judicial assistants, and other support staff, are confronted daily with countless questions about cases, policies, procedures, forms, terms, attorneys and the judiciary. Consequently, each and every day, court personnel must decide what information they can provide to customers, often with little guidance.

The perception of Arizona courts and their accessibility is affected by how court personnel respond to the questions posed by court customers. Their responses may also affect actual access to the courts. If someone does not understand how to use the court system, and court personnel fail to provide available and needed information, that customer is denied access to the courts and justice.

Court personnel throughout Arizona are competent people who possess vast knowledge about how the court system operates, and they desire to help those who request assistance. Therefore, to improve the quality of the service that Arizona courts offer and to enhance the administration of justice, it is imperative that court personnel be provided with the tools necessary to better serve court customers. The materials that follow are offered as a tool chest to achieve this end.

II. The Roles and Responsibilities of the Court and Court Personnel

Provide Access – Provide Customer Service – Provide Accurate Information

Helping People Help Themselves

- **PROVIDE ACCESS TO THE COURTS**

- One of the basic principles of the American Justice System is that the doors of our courthouses are open to everyone.
- Most members of the public, however, are not familiar with courts and court procedures and require some level of assistance.
- Access to justice is effectively denied if court customers do not know how to use the system, and the court does not tell them.
- The court has an obligation to explain court processes and procedures to court customers.
- Court personnel, as the gatekeepers to the court system, are obligated to ensure that the basic principle of accessibility is achieved.
- Court personnel, trained on what information they can provide to the public, will significantly affect access to the courts and the administration of justice.

- **PROVIDE CUSTOMER SERVICE**

- The court has an obligation to provide quality customer service to all court customers.
- The court is responsible for giving court customers the help they need and deserve by furnishing accurate information as requested in a competent, cooperative and timely manner.
- The court should treat all court customers equally: attorneys, defendants, pro se litigants, etc.
- Court personnel often are the first and only contact the public has with the judicial system.
- How court personnel respond to questions and requests for information can have a tremendous impact on the administration of justice, affecting how court customers view their court experience.

- Court personnel must remain neutral and impartial and never give information for the purpose of giving one party an advantage over another.
 - Court personnel should learn about *ex parte* communication and not let court customers use court personnel to circumvent that principle, or fail to respect it, in acting on matters delegated to them for decision.
 - By providing effective customer service, court personnel may reduce the number of times court customers must come to court, and thus, reduce stress on the court system.
- **PROVIDE ACCURATE INFORMATION**
 - The court is obligated to provide accurate information to all court customers.
 - Accessibility to the judicial system is affected by the accuracy of information that the court provides to court customers, along with the manner in which it is presented.
 - Court personnel must provide accurate information because even seemingly small mistakes can affect people's lives or the outcome of court cases.

**REMEMBER: IT IS NOT UP TO COURT PERSONNEL TO DETERMINE WHO
NEEDS INFORMATION.
IT IS THEIR RESPONSIBILITY TO PROVIDE APPROPRIATE ASSISTANCE
TO ANYONE WHO REQUESTS IT.**

III. Why Court Personnel May Not Give Legal Advice But Should Provide Legal Information

Neutrality – Impartiality – Unauthorized Practice of Law

- **REMAIN NEUTRAL**

- Court personnel must remain neutral and cannot promote or recommend a particular course of action to court customers.
- Court personnel may have processed many similar types of cases, but are not in a position to know what is in a court customer's best interest. Only the court customers or their attorneys can make that determination.

- **BE IMPARTIAL**

- Impartiality is similar to neutrality, but focuses on equal treatment of court customers.
- Court personnel often have considerable knowledge about the way the court functions and so must never give advice or information favoring one court customer over another.
- Court knowledge must be shared fairly.
- Court personnel must not disclose confidential information or become involved in or facilitate an *ex parte* communication. See Section VI, Page 6.

- **DON'T ENGAGE IN THE UNAUTHORIZED PRACTICE OF LAW**

- Court personnel must not engage in the unauthorized practice of law by providing legal advice.
- Only attorneys admitted to practice by the State are permitted to practice law and give legal advice.
- Even court personnel who are also attorneys may not give legal advice to court customers because it violates the concepts of neutrality and impartiality.

IV. What Constitutes Legal Information

Legal information is communication of facts about court procedures, timing and resources. It includes information contained in court records, examples of forms or pleadings, informational pamphlets, copies of statutes and court rules, procedures, practices and due dates.

Legal information involves identifying available procedural options (within the scope of the personnel's knowledge) and helping customers understand and comply with court procedures.

Legal information is generally about court process (how the court and its judges function), court rules, court records and forms. If that information can be found in a source that the court makes available to the public, you can either:

- Tell the customer yourself, if you know, or
- If you are unsure of the answer, direct the customer to the appropriate court personnel or other publicly available source.

See the Question and Response Handbook for more details and specific examples.

V. What Constitutes Legal Advice

Legal advice is a written or oral statement that:

- Interprets some aspect of the law, court rules, or court procedures, or recommends a specific course of conduct a person should take in an actual or potential legal proceeding,
- Applies the law to the individual person's specific factual circumstances, or
- Requires the person giving advice to have knowledge of the law and legal principles beyond familiarity with court requirements and procedures.

Court customers are asking for legal advice when they ask whether or not they should proceed in a certain fashion.

Telling a court customer "what to do" rather than "how to do it" may constitute giving legal advice.

See the Question and Response Handbook for more details and specific examples.

VI. What is Ex Parte Communication

Black's Law Dictionary defines *ex parte* as “on one side only; by or for one party; done for one party only.”

With few exceptions, the court rules require that all documents filed with the court be given to all other parties in the case so that the other parties have an opportunity to respond. Thus, it is improper for personnel to transmit information to the judge unless that information has been provided to the other parties in the case.

“*Ex parte*” refers to situations in which only one party appears before a judge. Such meetings are often forbidden.

The Arizona Code of Judicial Conduct establishes standards for the ethical conduct of judges and further sets out when a judge may consider *ex parte* communications. Canon 3B(7) of the Code provides in part:

A judge shall accord to every person who has a legal interest in a proceeding, or that person’s lawyer, the right to be heard according to law. A judge shall not initiate, permit, or consider *ex parte* communications, or consider other communications made to the judge outside the presence of the parties concerning a pending or impending proceeding except that:

- (a) When circumstances require *ex parte* communications for scheduling, administrative purposes or emergencies that do not deal with substantive matters or issues on the merits are authorized.

(Commentary) A judge must make reasonable efforts, including the provision of appropriate supervision, to ensure that section 3B(7) is not violated through law clerks or other personnel on the judge’s staff.
[Emphasis added to commentary.]

Although a judge normally must meet with all parties in a case and not just one, there are circumstances where this rule does not apply and the judge is allowed to meet with just one party (*ex parte*), such as when a party requests an extension of time for service of a summons or a dismissal before the other parties’ answer or appearance.

In addition, sometimes judges will issue temporary orders *ex parte* based on one party’s request without hearing from the other party, when time is limited or it would do no apparent good to hear the other party in the dispute. For example, if a wife claims domestic violence, a court may immediately issue an *ex parte* order telling her husband to stay away. Once he’s out of the house, the court holds a hearing, where he can tell his side, and the court can decide whether the *ex parte* order should be made permanent.

See Section VIII.9, Page 20 for more details and specific examples, and the *Question and Response Handbook*, Page 3.

VII. Quality Customer Service: Strategies for Answering Difficult Questions

Listen – Ask Questions – Be Patient – Explain – Don't Hide – Offer Options

It is not always clear whether or not court personnel can answer a question. There are, however, several things that personnel can do to assist court customers and make it easier to identify whether someone is asking for legal information or for legal advice. The following strategies should be implemented in a culturally sensitive manner.

- **LISTEN CLOSELY**

- Let court customers ask their questions and listen carefully to what they are asking.
- Be an active listener:
 - Look the customer squarely in the face;
 - Open your posture;
 - Lean forward slightly;
 - Establish eye contact; and
 - Reflectively respond.

- **ASK QUESTIONS**

- Take the time to clarify what court customers need.
- Convey to court customers that their questions are important and complex.
- Ask court customers if they have completely read any paperwork they may have.
- Ask court customers questions to clarify your understanding of what they want.
- Most people are not familiar with court procedures or terminology. If someone does not ask a question in the right way, it is the personnel's responsibility to take the time to clarify what is being asked.

- **BE PATIENT**

- Coming to court can be stressful, confusing and intimidating, so court personnel should take the time to welcome and greet court customers.
- Allow enough time to determine what the court customer really wants.
- Court personnel may have been asked for the same information many times before, but remember that this is the first time for this particular court customer.
- Put yourself in the customer's position and think of how much you would appreciate it if someone took the time to answer your questions and explain an unfamiliar process.
- Remain calm even when the court customer is not. Your attitude is key. Some customers may just need to vent. Take it professionally, not personally.

- **EXPLAIN YOUR ANSWERS AND REASONS**

- Be clear and concise when providing information.
- Providing the reasons why court personnel cannot give certain information helps minimize customer's frustration and increases their understanding of the court system. If you cannot answer a question or provide assistance, explain why by telling the court customer how important it is that court personnel remain neutral and impartial.
- If court personnel cannot answer a question, give alternatives.

- **DON'T HIDE BEHIND THE PHRASE "I CAN'T GIVE LEGAL ADVICE"**

- The phrase "I can't give legal advice" should never be used as an excuse not to provide service.
- The term "legal advice" has no inherent meaning to court customers so it is not helpful as a reason for not providing assistance.
- There is usually some information or assistance that can be provided even if it is just explaining the reason court personnel cannot give legal advice, explaining procedural options or making a referral.

- **OFFER OPTIONS TO COURT CUSTOMERS**

- Be prepared to offer options of resources for legal help, including referrals to other agencies and self-service centers.
- Ask court customers if they know of an attorney they can turn to for assistance.
- If they do not have an attorney, provide information on how they can find an attorney. Do not suggest which attorney the customer should or should not contact because court personnel must remain neutral and impartial at all times.

HELPING MAKE YOUR COURT USER-FRIENDLY WILL HELP CUSTOMER RELATIONS.

REMEMBER TO SAY THANK YOU!

VIII. Information Court Personnel Can and Cannot Provide

1. PROCEDURAL EXPLANATIONS VS. PROCEDURAL RECOMMENDATIONS

Court personnel should provide procedural information and explanations on how to accomplish various actions within the court system. Explaining various procedures increases the public's understanding of the court system and provides customers with greater access to the courts.

Court personnel should not make any recommendation to the customer that would indicate a direct advantage or disadvantage of a particular procedure. It is not appropriate for personnel to tell court customers what is the best course of action for them to take.

Examples:

CAN PROVIDE	CANNOT PROVIDE
Procedural Explanations	Procedural Recommendations
<p>Question: Can you tell me how to file a small claims action?</p> <p>Response: Yes. You need to fill out a small claims complaint and then file it with the clerk's office. At the time you file the complaint, you will have to pay a filing fee. The clerk will issue you a case number and give you copies of the paperwork. You will need to mail one copy to the defendant via certified return receipt mail.</p>	<p>Question: Can you tell me whether it would be better for me to file a small claims action or a civil claim action?</p> <p>Response: I cannot tell you which process would be best for your situation because I cannot give you legal advice. You may want to talk to an attorney on this one issue to determine which process best fits your situation. You may also contact other legal resource organizations in your area, or you may research at the local law library.</p>

Tip: Have a list of legal resource agencies available to hand to the customer. If responding by telephone, be sure to give the customer several of the options on the list from which to choose.

2. GENERAL INFORMATION ON COURT OPERATIONS VS. CONFIDENTIAL OR RESTRICTED INFORMATION ON COURT OPERATIONS

Generally, court personnel can answer questions about court policies and procedures. However, there is some information that could be inappropriately used to affect the status or outcome of a case, such as case assignment procedures, adjournment policies and scheduling practices. It is important for court personnel not to disclose information that would allow one party or another to have an unfair advantage. Personnel should also refrain from answering any question that would involve the disclosure of confidential or restricted information.

As a general rule, it is appropriate for court personnel to provide information on how to do something, but it is not appropriate to answer the “how” question when it involves the disclosure of confidential or restricted information.

Examples:

CAN PROVIDE	CANNOT PROVIDE
General Information on Court Operations	Confidential or Restricted Information on Court Operations
<p>Question: When will my divorce go to court?</p> <p>Response: A final divorce hearing may be set no sooner than 60 days from the date the other party was served, providing all requirements have been met. This time frame may be altered depending on the type of service in the case.</p>	<p>Question: I don't want Judge Doe assigned to my case. Can you tell me when he will be on vacation so that he doesn't get assigned to it?</p> <p>Response: I'm sorry, but I can't give you that information. I can tell you that judges are randomly assigned to cases.</p>

Tip: Court personnel should become acquainted with the State rules governing their specific areas of the court. Personnel are not responsible for reciting, researching or interpreting the rules for the customer.

3. EXPLAINING LEGAL TERMS VS. PROVIDING LEGAL INTERPRETATIONS

In order for court personnel to help customers access the court and understand the court system, it is necessary for personnel to assist customers in understanding legal terms. While it is appropriate to explain legal terms, it is not appropriate to provide legal interpretations.

Examples:

CAN PROVIDE	CANNOT PROVIDE
Legal Definition	Legal Interpretation
<p>Question: What does “proof of service” mean?</p> <p>Response: The rules require parties to file proof with the court that they complied with the requirement to serve other parties. This proof is called “proof of service”. Proof of service can be by a certificate of service or by acceptance of service. (Personnel should go on to explain each of these types of proof of service.) Our State rules of procedure require parties to give copies of any document filed with the court to all other parties in the case. The service options you have are outlined in court rules and state statutes. We also have that information available for you in the self-service center.</p>	<p>Question: My neighbors leave their kids at home all day without supervision. Isn’t that child neglect?</p> <p>Response: I am not an attorney or a judge and cannot make that legal determination. I can, however, refer you to Child Protective Services who may be able to assist you. If you feel that the children are in any kind of danger, you can always contact law enforcement.</p>

Tip: Have copies of the most common rules of procedure to hand to the customer. Know the location(s) of the local law library in order to refer the customer for research.

4. PROVIDING FORMS AND APPROVED INSTRUCTIONS VS. FILLING OUT FORMS

Another important way to facilitate access to the court is by providing forms and assistance where resources allow. It is important that court personnel be knowledgeable about what forms and written instructions are available from the court and other agencies. Often court customers will not know what forms to request in order to bring their matters before the court. When this happens, personnel should direct customers to available resources for forms such as local self-service centers, local court websites or the Arizona Supreme Court website.

Canon 3 of the Arizona Code of Judicial Conduct provides that, “Employees may assist citizens, consistent with the court’s resources, with matters within the scope of their responsibilities and knowledge. This assistance may include...helping to complete forms with factual information provided by a citizen.” Court forms can be confusing, so court customers frequently ask for help in filling them out. If a court customer cannot figure out how to fill out a required form, he or she may be denied access to the court.

Due to time and resource constraints, court personnel may want to suggest that customers fill out as much of their form as possible before asking for assistance. Personnel may also suggest that the customer have a friend or family member help them fill out the form. The Americans With Disabilities Act, however, requires court personnel to provide reasonable accommodations to qualified disabled individuals, which may include helping them fill out portions of their forms.

Court personnel can answer procedural questions about how to complete court papers and forms. For example, personnel can tell a customer whether a form needs to be notarized or for what factual information the form is asking. Personnel cannot, however, tell a court customer what words to put on the forms.

When helping a court customer fill out forms, write down exactly what the person dictates. Be careful not to correct the person’s grammar. What you write must be word for word. Remember that paraphrasing or changing what someone says can be considered giving legal advice. Filling out a form for a court customer using court personnel’s own words threatens the court’s impartiality. If someone asks what to say in a form, personnel should tell the customer to use his or her own words to state the information requested.

PROCEDURE: After writing the information:

- Confirm with the party that what you have written is correct, and
- Write or stamp words such as the following in the margin of the document: “dictated by court customer, written verbatim by court personnel,” followed by your initials or name and why the assistance was necessary.

Examples:

<p style="text-align: center;">CAN PROVIDE</p> <p style="text-align: center;">Providing Forms and Approved Instructions</p>	<p style="text-align: center;">CANNOT PROVIDE</p> <p style="text-align: center;">Filling Out Forms</p>
<p>Question: I need to file for divorce and I have no idea where to begin. Is there some place I can go to find out how to get started?</p> <p>Response: Sure. We have a self-service center which provides forms here as well as online. You can speak with them about the paperwork you will need for your divorce, and they can provide you with written instructions on how to fill out the paperwork as well. There is a fee for the costs of the packets unless you have access to the internet and can download the forms and instructions yourself.</p>	<p>Question: The self-help divorce petition says I can ask for spousal support if my spouse contributed to my educational opportunities. Since my husband stayed home to watch the children while I took night classes, should I mark that box on the form?</p> <p>Response: As court personnel, I don't have the legal knowledge to determine whether your circumstances meet the legal criteria. I can explain what information the form is asking from you, but I cannot help you decide what information to enter. If you have questions about whether certain information is appropriate to enter on the forms, an attorney can advise you. Here's a list of resources for finding an attorney.</p>

See the *Question and Response Handbook* for more details and specific examples.

Tip: Courts may want to prepare a stamp with words such as “dictated by court customer, written verbatim by court personnel” for use whenever court personnel assist with filling out forms.

5. PUBLIC CASE INFORMATION VS. CONFIDENTIAL CASE INFORMATION

Some documents or entire cases are confidential, sealed or secret, and court personnel cannot disclose confidential, sealed or secret information. Be sure to ask your supervisor or a judicial officer if you do not know what records or cases are public and what records or cases are confidential, sealed or secret.

Generally, there are three categories of confidential records. Cases and documents, such as adoptions, children's cases and custody reports, may be designated confidential by statute, court rule or court order. These records are designated as "confidential," "sealed" or "secret."

- **Confidential Records:** Unless otherwise ordered by the court, only the following people may be given access to confidential records:
 - Parties to the action;
 - Counsel of record;
 - Individuals with a written order from the court authorizing access; and
 - Court personnel. Access by court personnel is for case processing purposes only.
- **Sealed Records:** In addition to being confidential, access to these records is restricted to the judge and other authorized court personnel. After a record is sealed, unauthorized court personnel may not open the record without written permission from the court.
- **Secret Records:** For secret records, court personnel cannot disclose parties, case numbers or any information at all. Criminal cases that have a Grand Jury Indictment, but have not been served, are examples of secret cases. Until the defendant is served, court personnel are not allowed to even disclose that there is a case.

Access to internal memoranda, notes or preliminary drafts prepared by or under the direction of any judicial officer which relate to the adjudication, resolution or disposition of any past, present or future case, controversy or legal issue is limited to court personnel for case processing purposes only.

Court personnel must not disclose the outcome of a matter submitted to a judge for decision until the outcome is part of the public record or the judge directs disclosure of the matter.

Court personnel must not speculate on the possible outcome of a matter submitted to a judge or a jury until the outcome is part of the public record. This also applies in cases when a matter has not yet been submitted to the court.

Court personnel should not read confidential, sealed or secret records unless necessary to do their job. Confidential, sealed and secret records contain highly personal information about parties, and it is inappropriate for court personnel to read these records unless it is required for their work.

Examples:

<p style="text-align: center;">CAN PROVIDE</p> <p style="text-align: center;">Public Case Information</p>	<p style="text-align: center;">CANNOT PROVIDE</p> <p style="text-align: center;">Confidential Case Information</p>
<p>Question: My mother died four months ago and I lost my paperwork regarding her probate case. Can you give me the case number, and can I get copies of the pertinent documents?</p> <p>Response: Sure. We need to know her name and date of death. I'll check our records and give you the case number. Then, you can visit our legal records department and view the file. When you find the documents you want, you can purchase the copies for \$.50 a page. Or, you can call and tell them which documents you want, and they will copy them for \$.50 a page.</p>	<p>Question: I think there is a Mental Health case for my uncle in your court. His name is John Smith. Can you tell me anything about his case?</p> <p>Response: Yes, I can look to see if a Mental Health record exists. What that means is that I will be able to look up this case on our computer system and give you a case number if there is one. Once you have a case number, you can get information on any upcoming hearings. Any information other than that is confidential and you would have to have permission from the Probate Judge to view the file.</p>

7. CITING STATUTES, COURT RULES AND ORDINANCES VS. RESEARCHING STATUTES, COURT RULES AND ORDINANCES

Court personnel are often knowledgeable about statutory and court rule citations, especially as they apply to procedures, and it is appropriate for personnel to share this information. However, it is not appropriate for personnel to conduct legal research. There are two factors that help distinguish between the two:

- If the information is something personnel should know as a part of their job, then it is not considered legal research, even if personnel has to look it up in the statute book, or
- If the information is readily available and does not have to be compiled, then it probably would not be considered legal research. If the information has to be compiled, then it probably is legal research.

Examples:

CAN PROVIDE	CANNOT PROVIDE
Cites of Statutes, Court Rules and Ordinances	Research of Statutes, Court Rules and Ordinances
<p>Question: Can I get a copy of a document from a case? Is it a public record?</p> <p>Response: Court records and documents are public record unless categorized as secret, confidential or sealed by a judge. Court Rule 123 explains about public records and what steps can be taken to have access to them if they are not public. The Arizona Revised Statutes, §12-284 for Superior Courts, §22-281 for Justice Courts and §22-404 for Municipal Courts, require that we charge a \$.50 per page copying fee.</p>	<p>Question: Can you tell me what laws govern tort claims?</p> <p>Response: I cannot perform legal research for you, but you can attempt to do that research yourself or you can contact an attorney to assist you. There are copies of the statutes, rules and ordinances in the local law library.</p>

Tip: Have addresses of local libraries available on a resource sheet that can be handed out to court customers.

8. GENERAL REFERRALS VS. SUBJECTIVE OR BIASED REFERRALS

Court personnel can make general referrals to legal professionals for assistance. For example, personnel can refer court customers to an attorney for advice, but cannot suggest which attorney the person should or should not contact.

Court personnel should not involve themselves in the relationship between an attorney and a client. For example, if a defendant complains to you that his attorney is not doing a very good job, you must refrain from expressing an opinion about the attorney's competence.

Examples:

CAN PROVIDE General Referral	CANNOT PROVIDE Subjective or Biased Referral
<p>Question: I need a process server. Where do I find one?</p> <p>Response: Here is a list of court certified process servers. You may also check in the phone book or internet for licensed process servers in this area.</p>	<p>Question: Can you recommend a good process server?</p> <p>Response: I'm sorry, but the court must remain impartial. I cannot recommend a specific process server, but I can suggest that you check the phone book or the internet for a licensed process server in your area.</p>

Tip: Develop and have available a list of general resources and referrals to give customers. Good general referrals include the yellow pages and the Internet.

9. PERMISSIBLE VS. IMPERMISSIBLE FORMS OF *EX PARTE* COMMUNICATION

As discussed in Section VI, court personnel may not transmit information to a judge unless that information has been provided to the other parties in the case. To uphold this principle, court personnel should follow these guidelines:

- Do not communicate to the judge case information that you know through personal knowledge, that you have read in the newspaper or heard on the radio, or that someone told you,
- Do not transmit verbal information to a judge on behalf of a party or attorney concerning a case unless it involves scheduling or other administrative matters,
- Screen all calls to a judge. Do not transfer phone calls to a judge from parties or attorneys without learning what the caller wants to talk to the judge about and whether it is associated with a case before the judge, and then ask the judge if he/she wants to take the call, and
- Communications about scheduling or other administrative matters are permitted because they do not deal with the litigation’s substance or merits, and no party gains an advantage as a result of the *ex parte* contact.

Examples:

CAN PROVIDE	CANNOT PROVIDE
Permissible Forms of <i>Ex Parte</i> Communication	Impermissible Forms of <i>Ex Parte</i> Communication
<p>Question: Has the judge ruled on the motion to dismiss yet?</p> <p>Response: No, the judge has not ruled on the motion yet. It is still under advisement.</p>	<p>Question: I am a prosecutor in the DUI case today. Please tell the judge that I don’t think we’re going to have the trial today because the defendant has already admitted he was drunk.</p> <p>Response: I cannot tell the judge information about potential evidence in the case because it would be an impermissible <i>ex parte</i> communication.</p>

See Section VI, Page 6, and the *Question and Response Handbook*, Page 3, for more details.

Tip: Remember that *Black’s Law Dictionary* defines *ex parte* as “one side only; by or for one party; done for one party only.”

APPENDIX A

Administrative Order No. 2006-40

IN THE SUPREME COURT OF THE STATE OF ARIZONA

In the Matter of:)
)
ESTABLISHMENT OF A) Administrative Order
LEGAL ADVICE – LEGAL) No. 2006- 40
INFORMATION GUIDELINES)
TASK FORCE)
_____)

Like many other states, the number of self-represented litigants in Arizona’s courts is increasing. A recent study of the Family Court Department in the Superior Court of Maricopa County found that staff expresses a restrictive view of the amount of information and assistance they may provide to litigants. As a result, the current methods of assisting pro pers may frustrate rather than facilitate case processing and contribute to litigant dissatisfaction with the justice system.

Providing access to swift, fair justice is Goal One in *Good to Great, the Strategic Agenda for Arizona’s Courts 2005-2010*. To that end, this court has focused on several areas including providing meaningful assistance to self-represented litigants. The initiative to develop and adopt Supreme Court guidelines defining legal assistance, as distinguished from legal advice, will authorize judicial staff to provide appropriate legal assistance and increase the amount of meaningful information provided to self-represented litigants.

In accordance with Arizona Code of Judicial Administration § 1-104, the Chief Justice may establish advisory committees to the Arizona Judicial Council to assist the Council in carrying out its responsibilities.

Now, therefore, pursuant to Article VI, Section 3, of the Arizona Constitution,

IT IS ORDERED that the Legal Advice – Legal Information Guidelines Task Force is established to review materials and information gathered from other states that have adopted policy statements, to develop standards adopting authoritative distinctions between legal information and legal advice for guidance to court staff, and to determine the best method(s) for implementation of the proposed guidelines in Arizona’s courts that will promote consistent quality service. The Task Force shall provide a final report and recommendations to the Arizona Judicial Council for adoption by March 2007.

IT IS FURTHER ORDERED that the individuals listed on Appendix A are appointed as members of the Task Force beginning upon entry of this Order until completion of the Task Force’s work. The Chief Justice may appoint additional members as necessary.

IT IS FURTHER ORDERED that the Task Force meetings shall be scheduled at the direction of the Task Force Chair. Pursuant to Arizona Code of Judicial Administration § 1-202,

all meetings shall comply with the public meeting policy of the Arizona Judicial Branch. The Administrative Office of the Courts shall provide staff for the Task Force who may, as feasible, conduct or coordinate research as requested by the Task Force.

Dated this 3rd day of May, 2006.

RUTH V. MCGREGOR
Chief Justice

APPENDIX B
GLOSSARY OF COMMON TERMS

Note to Court Personnel:

This Glossary is a collection of commonly used legal terms and is not intended to be a complete listing of all legal terms. If a term is not listed here refer to *Black's Law Dictionary* for a comprehensive list of legal terms.

Glossary of Common Terms

A.

AFDC (Aid to Families with Dependent Children): Public assistance paid on behalf of children.

ATLAS (Arizona Tracking Location Automation System): A statewide computer system for child support enforcement.

Abandoned/Abandonment: (general) The relinquishment of a right or interest with the intention of never claiming it, such as to a car, house or trademark. (family law, juvenile law) A parent/custodian's failure to provide reasonable care, support and regular contact with a child, including providing normal supervision, for an excessive period of time.

Abeyance: The condition of being suspended or temporarily set aside.

Absent Parent: A person who is absent from the home and legally responsible for providing financial support for a dependent child.

Absentia/In Absentia: Proceedings held without the defendant's presence.

Abuse: The infliction or allowing of physical injury, impairment of bodily function, disfigurement, serious emotional damage, sexual abuse, sexual conduct with a minor, sexual assault, molestation of a child, commercial sexual exploitation of a minor, sexual exploitation of a minor, incest, child prostitution or physical injury to a child that results from abuse.

Active Calendar: The calendar on which civil cases are placed after the filing and processing of a motion to set and certificate of readiness or after the setting of a trial date.

Addendum: An addition to a completed written document.

Additur: To add to the amount of a verdict when damages a jury awards appear to be too little.

Adjudication: (juvenile law) A proceeding whereat a juvenile is found to be a delinquent or incorrigible youth. (civil law, family law) The determination of issues in a lawsuit; the judgment.

Adult: A person who is 18 years of age or older.

Adult Court: The justice court, municipal court or criminal division of the superior court that has jurisdiction to hear proceedings concerning offenses committed by juveniles.

Affidavit: A written statement of facts made under oath before a notary public or other person authorized to administer oaths.

Agent: One who has authority to act for another; an attorney-in-fact under a durable or nondurable power of attorney or a person authorized to make decisions concerning another person's health care or for another person under a natural death act.

Aggravation/Mitigation Hearing: A pre-sentence hearing at which the State presents witnesses and/or documentation to enhance a defendant's sentence and the defendant may present evidence and witnesses in hopes of lessening it.

Aid to Families with Dependent Children (AFDC): Public assistance paid on behalf of children.

Alford Plea: A guilty plea whereby a defendant refuses to admit guilt but believes the plea is in his/her best interests because of incentives in the plea agreement.

Allegation of Prior Conviction: A document filed by the State alleging that a defendant has been convicted previously of a felony.

Answer: A defendant's written response to a plaintiff's allegations or accusations in a complaint, usually denying some of the facts alleged in the complaint.

Annulment: A declaration that a valid marriage never existed (filed as a petition and processed along the same guidelines as a dissolution).

Appeal: To ask a higher court to reverse a lower court's decision; to seek review from a higher court.

Appearance Bond: See "Unsecured Appearance Bond".

Appellant: A party who appeals a decision or judgment to a higher court.

Appellee: A party against whom an appeal is taken to a higher court, usually the winning party in the lower court.

Application: A written request to the registrar for an order of informal probate or appointment.

Arbitration: The process of submitting a dispute to a third party who will make a decision. When the amount in controversy is less than \$50,000, arbitration is mandatory.

- **Binding Arbitration:** The hearing and settlement of a dispute by a third party (arbitrator) whose decision will be binding upon the parties.
- **Non Binding Arbitration:** The hearing and entry of an “award” which may be appealed.

Arbitrator: An attorney selected to hear a case and settle the legal dispute without a formal trial.

Arizona Tracking Location Automation System (ATLAS): A statewide computer system for child support enforcement.

Arraignment: An appearance before a judge or criminal commissioner at which a defendant has an opportunity to enter a plea (guilty, not guilty or no contest) to all charges. If the defendant pleads not guilty, a pretrial conference is set and a judge is assigned.

Arrearages (Arrears): Unpaid child support/spousal maintenance payments owed by a person obligated to pay support. Typically, these are past-due support amounts, including interest that has accrued on amounts due. A support payment is past due if it is not received by the Clerk of the Court/clearinghouse on the date due. If ordered to be paid directly by the obligor to the obligee, it is past due if it is not postmarked by the date due.

Authentication: A document issued by clerk’s offices that verifies that a legal document is genuine or valid.

Award: The written decision or judgment of an arbitrator, judicial officer or jury.

Award/Commit: To assign legal custody.

B.

Battery: A beating or wrongful physical violence.

Bench Trial: A trial without a jury at which the judge decides the facts.

Bench Warrant: A written request from the court to a law enforcement agency to arrest and detain a person who has failed to appear for a court date or abide by a court order.

Beneficiary: As it relates to a trust beneficiary, a person who has any present or future vested or contingent interest and the owner of an interest by assignment or other transfer. As it relates to a charitable trust, any person entitled to enforce the trust. As it relates to a beneficiary of a beneficiary designation, a beneficiary of an insurance or annuity policy; an account with pay on death designation; a security registered in beneficiary form or a pension; a profit sharing, retirement or similar benefit plan or any other nonprobate transfer at death. As it relates to a beneficiary designated in a governing instrument, a grantee of a deed; a devisee; a trust beneficiary; a beneficiary of a beneficiary designation; a donee, appointee or taker in default of a power of appointment and a person in whose favor a power of attorney or a power held in any person, fiduciary or representative capacity is exercised.

Beneficiary Designation: A governing instrument naming a beneficiary of an insurance or annuity policy; an account with pay on death designation; a security registered in beneficiary form; a pension, profit sharing, retirement or similar benefit plan or any other nonprobate transfer at death.

Best Interests Attorney: (Formerly known as a Volunteer Guardian ad Litem) An attorney who volunteers to represent a child's best interests in a family law case. A "Child's Attorney" would be appointed in cases with serious concerns about the child's safety.

Bifurcated Trial: A trial that is divided in two; for instance, a trial on liability may be separate from the trial on damages.

Bond: (general) A written instrument guaranteeing the performance of acts. (criminal law) A security posted to guarantee a defendant's appearance at hearing or trial.

- **Bond Exoneration:** A court order requiring the entity holding the bond in trust to deliver it (cash or another form of security) to a specific party, most often the party that posted it.

- **Bond Forfeiture:** As it relates to bail bonds, occurs when the accused fails to appear for trial or any scheduled court appearance.

- **Supersedeas Bond:** A bond that a court requires from an appellant who wants to delay payment of a judgment until the appeal is over.

Bound Over/Bind Over: The superior court assumes jurisdiction of a case from a lower court.

Brady Material: Evidence that tends to mitigate or negate a defendant's guilt as to the offense charged.

C.

COP (Change of Plea): A defendant's change of a previously entered plea of not guilty to guilty or no contest.

CPS (Child Protective Services): The part of the Division of Children, Youth and Families under the Department of Economic Security that is mandated to protect children by responding to reports of abuse and neglect. CPS provides services to families to remedy problems and allow children to remain safely in their homes.

CSAW (“see-saw”) (Child Support Arrest Warrant): An arrest warrant issued for a person who has not paid or will not pay child support. The normally associated “bond” is set as a “purge” or “release” amount, which is an amount of support owed. When paid, the purge amount applies toward the past due support and is not returned as a bond in a criminal case would be.

CSEA (Child Support Enforcement Administration): The state agency charged with providing certain support services. It is also referred to as the State IV-D agency.

Case Status Report: A form filed by an attorney, usually at the time of pretrial, that gives the status of the case. Used at each division’s preference.

Certified Copy: A copy of a document or record that is signed and certified as a true copy by an employee of the Clerk of the Court.

Certiorari: Certain appellate proceedings for reexamination of actions of a trial court, or inferior appeals court.

Change of Plea (COP): A defendant’s change of a previously entered plea of not guilty to guilty or no contest.

Change of Venue: The moving of a case begun in one county or state to another county or state.

Child: (probate law) Includes a person who is entitled to take as a child under this title by intestate succession from the parent whose relationship is involved. Excludes anyone who is only a stepchild, foster child, grandchild or more remote descendant.

Child/Youth/Juvenile: A person who is under 18 years of age.

Child Protective Services (CPS): The part of the Division of Children, Youth and Families under the Department of Economic Security that is mandated to protect children by responding to reports of abuse and neglect. CPS provides services to families to remedy problems and allow children to remain safely in their homes.

Child Support: A parent’s legal obligation to pay money toward his/her child’s care and maintenance.

Child Support Arrest Warrant (CSAW) (“see-saw”): An arrest warrant issued for a person who has not paid or will not pay child support. The normally associated “bond” is set as a “purge” or “release” amount, which is an amount of support owed.

When paid, the purge amount applies toward the past due support and is not returned as a bond in a criminal case would be.

Child Support Enforcement Administration (CSEA): The state agency charged with providing certain support services. It is also referred to as the State IV-D agency.

Child Support Guidelines: A formula to determine the child support amount based on both parents' gross income. This formula uses a child support worksheet which must be submitted to the court.

Child's Attorney: (family law) (Commonly referred to as a Guardian ad Litem or Best Interests Attorney) An attorney appointed by the court to represent a child in a family law case. Common reasons to appoint such an attorney are the possibility of child abuse or one parent absconding with the child, possible or alleged domestic abuse or substance abuse on the part of one or both of the parents, concerns about the mental health or behavior of one or both of the parents, unsafe or unstable living conditions, special needs of the child, significant or persistent high conflict between the parents, that the child is an infant or a toddler or any other reason deemed appropriate by the court. A "Best Interests Attorney" would be requested in cases without such major concerns for the child's welfare.

"China Doll" Affidavit: An affidavit supporting a request for attorney's fees made by the prevailing party in a lawsuit. Refers to *Schweiger v. China Doll Restaurant, Inc.*, 138 Ariz. 183, 163 P.2d 927 (Ariz. Ct. App. 1983), dealing with attorney's fees applications made by the prevailing party in a lawsuit.

Civil Arrest Warrant (Bench Warrant): A warrant issued by a judge for failure to appear for a hearing or failure to comply with a court order in a civil matter.

Civil Procedure: The body of law and rules governing the methods and practices of civil litigation.

Claimant: One who claims or asserts a right, demand or claim.

Claims: As it relates to estates of decedents and protected persons, includes liabilities of the decedent or protected person, whether arising in contract, in tort or otherwise, and liabilities of the estate arising at or after decedent's death or after a conservator's appointment, including funeral and administration expenses. Does not include estate or inheritance taxes or demands or disputes regarding title of a decedent or protected person to specific assets alleged to be included in the estate.

Clerk of the Court: An elected official who is statutorily responsible for filing and processing all documents used in conjunction with superior court cases in accordance with mandated time limitations and archival standards. Provides a courtroom clerk for all sessions of court to record proceedings into minute entries that become permanent record. Receives, invests and disburses fines, fees, reimbursements, victim restitution and public/custodial trust funds.

Codicil: A supplement or appendix to a will.

Commissioner: A full time judicial officer appointed by the presiding judge and authorized to perform limited judicial functions.

Common Law Marriage: An implied marriage between parties established in another jurisdiction without the benefit of a ceremony or license. Arizona does not recognize common law marriage but will recognize the status from another state for the sole purpose of divorcing the parties and entering orders regarding property, child custody, parenting time and support.

Community Property: Property, other than a gift or inheritance to one party, that spouses acquire during the marriage. Each spouse has a one-half interest in community property, regardless of who has title to it. Also see “Debts”.

Complaint: An accusation, usually sworn before a magistrate, that a person has committed a specified offense; triggers judicial proceedings. The first pleading filed in a civil action. (juvenile law) A written statement of the essential facts constituting a public offense that is either made on an oath before a judge or commissioner of the superior court or an authorized juvenile hearing officer or accompanied by an affidavit of a law enforcement officer or employee that swears on information and belief to the accuracy of the complaint.

Conciliation Services: A branch of the court that offers services such as marriage counseling, mediation, custody evaluation, etc., to litigants involved in family court cases.

Condemnation Action: See “Eminent Domain”.

Conservator: A person appointed by a judge to manage a protected person’s financial affairs.

Contested Cases: Cases in which a response to a petition has been filed disputing some or all issues in the petition.

Contract: A binding agreement, written or oral, between two or more persons.

Contract Action: A type of lawsuit based on a breach of a written or oral contract.

Controverting Certificate: A document filed by any party to a case, other than the party who filed the motion to set and certificate of readiness, in which objections are stated to the information in a certificate of readiness.

Counterclaim: A claim or cause of action brought by a defendant against a plaintiff.

Courts:

- **Supreme Court:** The highest court in the State of Arizona; the Court of Last Resort; hears cases appealed to the supreme court from lower courts and death penalty cases from superior court.
- **Court of Appeals:** The court that reviews decisions and trials appealed to the court of appeals by a lower court, usually superior court.
- **Superior Court (General Jurisdiction):** A general jurisdiction court; has the authority to hear all legal actions not exclusively assigned to another court.
- **Municipal Court (Limited Jurisdiction):** A limited jurisdiction court that handles misdemeanor crimes and petty offenses and city ordinance and code violations and issues orders of protection and injunctions against harassment.
- **Justice of the Peace Court (Limited Jurisdiction):** A limited jurisdiction court with a justice of the peace serving as its judicial officer.

Court of Appeals: The court that reviews decisions and trials appealed to the court of appeals by a lower court, usually superior court.

Court-Appointed Attorney: (probate law) An attorney appointed by the court to represent an alleged incapacitated/protected person. (criminal law) An attorney appointed by the court to represent a defendant, based on the defendant's financial statement.

Court-Appointed Investigator: A person appointed by a judge to investigate the appropriateness of the appointment of a guardian or conservator.

Cross-Claim: A claim made by a party to a lawsuit against a plaintiff or co-defendant, or both, arising out of the original complaint.

Custodian: A person other than a parent or legal guardian who stands in loco parentis to a child or to whom legal custody of a child has been given by order of the juvenile court.

Custody Order: An order entered by the court that states with which parent a child will live.

- **Joint Custody:** Custody whereby both parents share important decisions about a child.
- **Sole Custody:** Custody whereby one parent has the sole authority to make important decisions about a child.
- **Custodial Parent:** The parent with legal custody and with whom a child lives.
- **Non-Custodial Parent:** The parent who does not have primary custody of a child but is responsible for financial support.
- **Primary Residential Parent:** In joint custody agreements, the parent with whom a child resides the majority of the time.

D.

DCSE (Division of Child Support Enforcement): A division of the Department of Economic Security that provides certain support services. Also referred to as the designated (IV-D) (four-D) agency.

Debts:

- **Community Debts:** Any debt, credit card bill, bank loan or mortgage that spouses obtain during the marriage.
- **Separate Debts:** Any debt, credit card bill, bank loan or mortgage obtained by one spouse before, and in some cases during, the marriage. These debts remain the obligation of the spouse who obtained them.

Decedent: A person who is deceased.

Declaratory Judgment: A judgment that declares the rights of the parties or expresses the court's opinion on a question of law without ordering anything to be done. Note: These cases are not subject to arbitration.

Decree: The final order in a divorce, legal separation or custody case. Signed by the judge/commissioner and filed with the Clerk of the Court. Can be in the form of a pleading or of a minute entry issued by the clerk after a hearing and signed by the judge/commissioner.

Default: The failure or neglect to answer a summons and complaint within the time allowed or the failure to appear in court.

Default Hearing: The hearing scheduled for cases in which the defendant has failed to appear or answer; the hearing set for litigants when the petition for dissolution is uncontested.

Default Judgment: The judgment awarded to the plaintiff because the defendant has failed to appear or answer.

Default Order: An order signed by a judge or commissioner because the other side failed to appear or contest the matter.

Defendant: The party against whom relief or recovery is sought in a suit; the party defending or denying a complaint; the accused in a criminal case.

Deferred Fees: Court fees that must be paid at a later date.

Delinquency Hearing: A proceeding in the juvenile court to determine whether a juvenile has committed a specific delinquent act as set forth in a petition.

Delinquent Act: An act by a juvenile that would be a criminal or petty offense if committed by an adult or that violates: any law of this state, or of another state if the act

occurred in that state; a law of the United States; any law that can be violated only by a minor and that has been designated as a delinquent offense or any ordinance of a city, county or political subdivision of this state defining crime. A juvenile who is prosecuted as an adult or remanded for prosecution as an adult shall not be adjudicated as a delinquent juvenile for the same offense.

Delinquent Juvenile: A child who is adjudicated to have committed a delinquent act.

Dependent Child: A minor child whom a decedent was obligated to support or an adult child whom a decedent was in fact supporting at the time of the decedent's death. (juvenile law) A juvenile who is: adjudicated to be in need of proper and effective parental care and control and who has no parent or guardian willing to exercise or capable of exercising such care and control; destitute; not provided with the necessities of life, including adequate food, clothing, shelter or medical care; under eight years of age and found to have committed an act that would result in adjudication as a delinquent juvenile or incorrigible child if committed by an older juvenile or child; incompetent or not restorable to competency and alleged to have committed a serious offense or living in a home that is unfit by reason of abuse, neglect, cruelty or depravity by a parent, a guardian or any other person having custody or care of the juvenile. Does not include a child who in good faith is being furnished Christian Science treatment by a duly accredited practitioner if none of the circumstances described above exists.

Deposition: Oral testimony taken of a witness under oath outside of court in the presence of a court reporter and attorneys.

Descendant: All of a decedent's descendants of all generations, with the relationship of parent and child at each generation.

Dessereault Hearing: A hearing set any time before trial to determine the legality or illegality of the method of identification of an alleged perpetrator.

Detention: The temporary confinement of a juvenile who requires secure care in a physically restricting facility that is completely surrounded by a locked and physically secure barrier with restricted ingress and egress for the protection of the juvenile or the community pending court disposition or as a condition of probation.

Devise: A testamentary disposition of real or personal property; **to devise:** to dispose of real or personal property by will.

Devisee: A person designated in a will to receive a devise. In the case of a devise to an existing trust or trustee, or to a trustee on trust described by will, the trust or trustee is the devisee and the beneficiaries are not devisees.

Directed Verdict: A ruling by the court that there is not sufficient evidence to submit the dispute to the jury, and the court either enters, or directs the jury to enter, judgment in favor of a party.

Disability: Cause for the appointment of a conservator or other protective order that can relate to the estate and affairs of a minor or an adult.

Discovery: The disclosure of facts or documents by one party in a lawsuit to another for use as evidence in a case.

Dismissal: An order or judgment that dismisses a complaint or counterclaim without a complete trial of the issues.

Dismissal With Prejudice: A final dismissal barring the right to bring an action on the same claim or cause.

Dismissal Without Prejudice: A final dismissal preserving a complainant's right to sue again on the same cause of action.

Disposable Earnings: Includes salary, compensation, bonuses or commissions a person received after deducting from such earnings those amounts required by law to be withheld. May include unemployment insurance compensation benefits, workmen's compensation benefits, social security benefits, retirement benefits, lottery winnings, etc.

Disposition Hearing: The time set for pronouncement of sentence after determination of violation of probation. (juvenile law) The initial sentencing hearing in a juvenile delinquency case.

Distributee: A person who has received a decedent's property from that person's personal representative other than as a creditor or purchaser. Includes a testamentary trustee only to the extent of distributed assets or increment that remains in that person's hands. A beneficiary of a testamentary trust to whom the trustee has distributed property received from a personal representative is a distributee of the personal representative. For the purposes of this paragraph, "testamentary trustee" includes a trustee to whom assets are transferred by will, to the extent of the devised assets.

Diversion: (juvenile law) A process by which a formal court action, such as prosecution, is averted. The diversion process is an opportunity for youth to admit their misdeeds and accept the consequences without going through a formal adjudication and disposition process. As it relates to an adult, a process which creates a written contract between the prosecutor and the accused that, if requirements are met, the prosecutor will dismiss all charges.

Division of Child Support Enforcement (DCSE): A division of the Department of Economic Security that provides certain support services. Also referred to as the designated (IV-D) (four-D) agency.

Divorce/Dissolution: A process that terminates a couple's marriage through the court.

Domestication: See “Foreign Decree/Foreign Judgment/Domestication”.

E.

Emancipation: A condition whereby a minor child is legally treated as an adult.

Emergency Assignment: The permanent assignment of a judge to hear a civil case; done only if there is need of an immediate emergency order by a judge.

Eminent Domain: The power to take private property for public use by the state and municipalities. See also “Condemnation Action”.

Employer: As it relates to Family Support, includes all persons or agencies obligated to make periodic payments to an obligee on behalf of an obligor.

Entitlements: Monies due to an obligee.

Estate: Includes the property of the decedent, trust or other person whose affairs are subject to this title as originally constituted and as it exists from time to time during administration. As it relates to a spouse, includes only the separate property and the share of the community property belonging to the decedent or person whose affairs are subject to this title.

Estoppel: A rule of law precluding a person from asserting certain facts because of his/her prior conduct.

Evidence: Proof presented in court through exhibits, records, objects, written documents or a witness’s testimony to persuade the judge or jury as to an alleged fact or position.

Evidentiary Hearing: The presentation of facts and evidence to the court to decide an issue.

Exemplify: To make an official copy of a legal document.

Exempt Property: That property of a decedent’s estate described in state statutes that is determined to be exempt from encumbrances.

Exhibit: A document or material produced and identified in court for the purpose of introducing it in evidence. Each document or produced material is numerically or alphabetically marked by the Clerk of the Court’s deputy courtroom clerk in order to identify it for the record.

Exoneration of Bond: An exoneration of bond is a court order requiring the entity holding the bond in trust to deliver it (cash or another form of security) to a specific party, most often the party that posted it.

Ex Parte: Communication with the court by one party without the presence or knowledge of the other party.

Ex Parte Order: An order entered by the court at the request of only one party without notice to the other party.

Expungement: Although this proceeding is not available in Arizona, it is the process by which the record of a criminal conviction is destroyed or sealed. See “Set Aside”.

Extradition: The surrender by one state to another of a person accused or convicted of an offense outside its own territory and within the territorial jurisdiction of the other state.

F.

FCRB (Foster Care Review Board): The Foster Care Review Board advises the juvenile court on progress toward achieving a permanent home for children involved in dependency actions and out-of-home placements. These children’s well being is of the highest concern to board members.

Fast Track: A calendaring program aimed at reducing the processing time of cases from the date complaints are filed to the final disposition.

Fees: Monies collected by the Clerk of the Court and set by the Arizona State Legislature. Fees may be waived or deferred if a party is eligible.

Fiduciary: A personal representative, guardian, conservator and trustee.

Filing Fee: The fee paid to the Clerk of the Court for the filing of a document.

Forcible Detainer: Exists when one is willfully kept out of or has been wrongfully deprived of possession of real property.

Foreign Decree/Foreign Judgment/Domestication: The filing of a certified copy of a judgment or decree from another state, county or country in order for this county to have jurisdiction.

Foreign Personal Representative: A personal representative appointed by another jurisdiction.

Forfeiture: The loss of some right or property as a penalty for some illegal act. The loss of property or money because of a breach of a legal obligation.

Formal Proceedings: Proceedings conducted before a judge with notice to interested persons.

Foster Care: The supervised care for delinquent or neglected children, usually in an institution, group home or private home, usually arranged through a government or social-service agency that provides remuneration for expenses.

Foster Care Review Board (FCRB): The Foster Care Review Board advises the juvenile court on progress toward achieving a permanent home for children involved in dependency actions and out-of-home placements. These children's well being is of the highest concern to board members.

G.

Garnishee: A person or entity, such as an employer, that owes money to or holds property of someone against whom the court has entered a money judgment.

Garnishment: A legal proceeding to enforce a judgment whereby a creditor seeks to obtain payment from a debtor and the debtor can be compelled to pay. Sometimes used by litigants in place and instead of a "Wage Assignment" in family court. A person's wages would be garnished for debts other than child support, such as credit card, car payment or medical bills. Civil hearing action sometimes referred to as a Judgment Debtor Exam.

General Jurisdiction Court: A court that has the authority to hear all legal actions not exclusively assigned to another court.

Governing Instrument: A deed; will; trust; insurance or annuity policy; account with pay on death designation; security registered in beneficiary form; pension, profit sharing, retirement or similar benefit plan; instrument creating or exercising a power of appointment or a power of attorney or a dispositive, appointive or nominative instrument of any similar type.

Governor's Warrant: A warrant issued for the arrest of a person charged with a crime in another state when that state demands the surrender of a person so charged.

Grand Jury (County): Sixteen citizens who have qualified for jury service and have the responsibility to look into public offenses. The County Attorney may choose to present evidence to a grand jury and ask them to return a criminal indictment. An indictment or "True Bill" is a formal accusation charging the commission of a public offense, which may be tried within a county. In order to indict, at least nine members of the grand jury must agree there is probable cause to believe that the person under investigation is guilty of the offense charged.

Grand Jury (State): A jury with the same responsibilities as a county grand jury except that its jurisdiction is statewide.

Gravely Disabled: Likely, as a result of a mental disorder, to come to serious physical harm or serious illness because the person is unable to provide for his/her basic physical needs.

Gross Income: Includes income from any source and may include but is not limited to income from salaries, wages, commissions, bonuses, dividends, severance pay, pensions, interest, trust income annuities and capital gains. May also include social security benefits, workmen's compensation benefits, unemployment insurance benefits, disability insurance benefits, gifts, prizes and spousal maintenance received.

Grounds: Reason for divorce. The term is not used in Arizona; Arizona is a no-fault state. Arizona requires that the marriage be irretrievably broken with no reasonable prospect of reconciliation in order to grant a divorce.

Guardian: A person who has qualified as a guardian of a minor or incapacitated person pursuant to testamentary or court appointment except for anyone who is merely a guardian ad litem.

Guardian ad Litem: A guardian appointed by the court to defend for or prosecute a minor or incapacitated person in any lawsuit to which he/she may be a party. (family law) Known as a "Best Interests Attorney" and appointed by the court to represent a child's best interests.

Guilty Plea: A defendant's admission that he/she committed the acts charged in the complaint, that the acts are prohibited by law and that he/she has no legal defense for such acts.

H.

Harassment: A series of acts over any period of time that is directed at a specific person; would cause a reasonable person to be seriously alarmed, annoyed or harassed and in fact seriously alarms, annoys or harasses the person and serves no legitimate purpose.

- **Injunction Against Harassment (IAH):** A court order directing a person to stop harassing, annoying or alarming another person. Injunctions may be used for disputes against neighbors, strangers and people who are or were dating. The injunction against harassment differs from the order of protection in that exclusive use of the home cannot be ordered and the police are not mandated to serve the injunction.

- **Injunction Against Workplace Harassment (IAWH):** A court order sought by an employer for relief on behalf of all employees at the workplace, anyone who enters the employer's property and anyone who is performing official work duties. This allows the inclusion of a number of people under the protective umbrella of this injunction; the "personal" injunction against harassment is usually between two people. In this instance, harassment is defined as a single threat or act of physical harm or damage or a series of acts over a period of time that would cause a reasonable person to be seriously alarmed or annoyed.

Harassment Petition: The document filed by a party asking for an injunction against any act of harassment by another party, not applicable if a previous or current family relationship exists.

Hearing: A procedure before a judge sitting without a jury during which evidence may be presented and witnesses heard to determine an issue and come to a decision generally on a less formal basis than in a trial.

- **Evidentiary Hearing:** The presentation of facts and evidence to the court to decide an issue.
- **Sentencing Hearing:** A hearing to formally pronounce sentence upon a defendant.
- **Aggravation Hearing:** A hearing held prior to sentencing to make a finding of aggravating or negative circumstances that would extend the length or increase the terms of a defendant's sentence.
- **Mitigation Hearing:** A hearing held prior to sentencing to make a finding of mitigating or positive circumstances that would shorten the length or decrease the terms of a defendant's sentence.
- **Trial:** The formal presentation of facts and evidence to a court or jury in order to reach a legal decision.
- **Trial de Novo:** A new trial held upon appeal from a non-record court or from appeal of an arbitration award.
- **Petit (Trial) Jury:** The group of people selected to decide the facts and render a verdict in a civil or criminal trial.

Hearsay: Testimony given by a witness who relates not what he or she knows personally but what others have said.

Heirs: Persons, including the surviving spouse and the state, who are entitled under the statutes of intestate succession to the property of a decedent.

I.

Impeach/Impeachment: To dispute or challenge the credibility or validity of a witness's testimony; one party's effort to undermine the credibility of testimony offered by another party.

In Camera: In chambers; in private.

Inactive Calendar: The calendar on which civil cases are placed by the Civil Court Administrator or a judge if no judgment has been obtained or motion to set and certificate of readiness filed within nine months of the filing of the complaint

Incapacitated Person: A person impaired by mental illness, deficiency or disorder; physical illness or disability; chronic drug use or intoxication or other cause, except

minority, to the extent the person lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his/her person.

Incorrigible Child: A child adjudicated as a child who refuses to obey the reasonable and proper orders or directions of a parent, guardian or custodian and who: is beyond that person's control; habitually is truant from school; is a runaway from the child's home or parent, guardian or custodian; habitually behaves in such a manner as to injure or endanger the morals or health of self or others; commits any act constituting an offense that can be committed only by a minor and is not designated as a delinquent act or fails to obey any lawful order of a court of competent jurisdiction given in a noncriminal action. Juveniles who commit offenses that would not be considered crimes if committed by adults are called status offenders (incorrigible youth).

Independent Living Program: A residential program with supervision of less than 24 hours a day.

Indictment: A written accusation by a grand jury that a certain person has committed a specified offense; triggers judicial proceedings.

Informal Proceedings: Proceedings conducted without notice to interested persons by an officer of the court acting as a registrar for the probate of a will or appointment of a personal representative.

Information: A written accusation by a public officer, not presented to a grand jury, that a certain person has committed a specified offense; triggers judicial proceedings.

Initial Appearance: A defendant's first court appearance, whereat the defendant is advised of his/her rights and the charges against him/her, a determination is made as to release status and counsel and a future court time is set in the appropriate court.

Injunction: A court order directing a person to take or refrain from taking a specified action.

Intake: Occurs when a youth is referred to juvenile probation with a delinquent or incorrigible charge.

Interested Person: An heir, devisee, child, spouse, creditor, beneficiary or other person with a property right in or claim against a trust estate or the estate of a decedent, ward or protected person. Also includes a person with priority for appointment as a personal representative and other fiduciaries representing interested persons. As it relates to particular persons, may vary from time to time and must be determined according to the particular purposes of, and matter involved in, any proceeding.

Interlocutory Stay: A provisional or temporary order made pending a final decision or outcome. The order is subject to change by the court, which often makes it not appealable until the entire matter has been disposed of by final judgment.

Interpleader Action: An action that allows a plaintiff to initiate a lawsuit in order to compel two or more other parties to litigate a dispute. An interpleader action originates when the plaintiff holds property on behalf of another but doesn't know to whom the property should be transferred. It is often used to resolve disputes arising under insurance contracts.

Interrogatories: Written questions asked one party to a suit by an opposing party, which must be answered in writing and under oath, and which may be used as evidence by the party demanding them, if relevant. Also can mean questions submitted to a jury.

Intervener: A person who intervenes as a third party in a legal proceeding.

Intestate: Having died and left no valid will.

Issue: As it relates to wills and trusts, a person's lineal descendants or offspring. This is distinguished from heirs.

IV-D Cases (Four-D): Cases in which a party receives these services of the Department of Economic Security or has been automatically referred to DES to collect child support.

J.

JIPS (Juvenile Intensive Probation Supervision): A highly structured, community-based juvenile probation program emphasizing surveillance, treatment, work, education and home detention.

JOLTS (Juvenile On Line Tracking System): A statewide juvenile probation and dependency management system.

Joint Tenants with the Right of Survivorship and Community Property with the Right of Survivorship: Owners of property held under circumstances that entitle one or more to the whole of the property on the death of the other(s) but excludes forms of co-ownership registration in which the underlying ownership of each party is in proportion to that party's contribution.

Judge: The public officer authorized to preside over, hear and determine cases in a court of law.

Judge Pro Tempore: An individual assigned to perform the duties of a judge on a temporary basis.

Judgment: A decision by a court that establishes the rights of the parties in an action or proceeding; the formal decision of a court; the final determination of a case.

Judgment Assigned: The permanent assignment of a case to a calendar division.

Judgment Creditor: A person who has won a case but not yet collected the debt.

Judgment Debtor: A person who has lost a case but not yet paid the debt; one who owes money as a result of a judgment in favor of a creditor.

Judicial Officer: One of the following:

- **Judge:** The public officer authorized to preside over, hear and determine cases in a court of law.
- **Commissioner:** A full time judicial officer appointed by the presiding judge and authorized to perform limited judicial functions.
- **Justice of the Peace:** A person elected to serve as a judge in a precinct within a county. A justice of the peace is not required to be an attorney.
- **Municipal Court Judge:** A person appointed to serve as a judge in a city court or municipality. Qualifications are set by the municipality, not necessarily required to be an attorney.
- **Referee:** A type of master appointed by a court to assist with certain proceedings.
- **Special Master:** A person appointed by the court to help parents resolve disputes about what is best for a child.
- **Magistrate:** Often used to refer to a municipal court judge. A.R.S. § 1-215 provides a broad definition that includes all those judicial officers having the power to issue a warrant for arrest, i.e., a supreme court justice, superior court judges, justice of the peace courts and municipal courts.
- **Judge Pro Tempore:** An individual assigned to perform the duties of a judge on a temporary basis.

Jurisdiction: The court's ability to make decisions in a case by virtue of the parties' residence within the court's jurisdictional boundaries, or the domestication of a judgment from another jurisdiction for the sole purpose of allowing this county to rule in the case; the power of a court to render judgment and decide a case.

Jurisprudence: The science or philosophy of law.

Jury: (criminal law) A group of citizens called to hear a trial of criminal prosecution and determine the defendant's guilt or innocence based on evidence presented. (civil law) A group of citizens called to hear the details of a civil lawsuit, to find for the plaintiff or defendant and to determine the amount, if any, to be awarded.

Justice of the Peace: A person elected to serve as a judge in a precinct within a county. A justice of the peace is not required to be an attorney.

Justice of the Peace Court (Limited Jurisdiction): A limited jurisdiction court with a justice of the peace serving as its judicial officer.

Juvenile Court: The juvenile division of the superior court when exercising its jurisdiction over children in any proceeding relating to delinquency, dependency or incorrigibility.

Juvenile Intensive Probation Supervision (JIPS): A highly structured, community-based juvenile probation program emphasizing surveillance, treatment, work, education and home detention.

Juvenile On Line Tracking System (JOLTS): A statewide juvenile probation and dependency management system.

L.

LCA (Lower Court Appeal): A category of civil cases involving non-traffic and civil appeals from a justice of the peace or municipal court.

Laches: Negligence or unreasonable delay in pursuing a legal remedy.

Law Enforcement Officer: A peace officer, sheriff, deputy sheriff, municipal police officer or constable.

Lease: Any oil, gas or other mineral lease.

Legal Assistant: A person who assists a lawyer in duties related to the practice of law but is not a licensed attorney.

Legal Separation: A court order establishing the terms of custody, support, etc., under which a married couple will live separately. The petition for legal separation is filed and processed the same way a dissolution petition is processed.

Letters: Letters testamentary, letters of guardianship, letters of administration and letters of conservatorship. Written evidence of authority to act as personal representative, guardian or conservator.

Limited Jurisdiction Court: A court that may hear and decide limited types of cases. In Arizona these are justice and municipal courts.

Limited Scope: Refers to a notice of limited scope representation filed by an attorney on behalf of a litigant when the attorney and litigant have come to an agreement that the attorney will appear on the litigant's behalf only on certain specified issues, not the entire case.

Lis Pendens: "Litigation pending". Filed and recorded in Office of County Recorder to warn others that the title to certain property is in litigation.

List of Witnesses and Exhibits: A document filed by parties to a lawsuit listing all witnesses and exhibits intended to be used at trial.

Litigant: A person who chooses to litigate a domestic or legal matter within the court system. (*Re-litigant:* A person who has made it his/her life's mission to constantly use the court system to solve sometimes irrelevant and antiquated domestic issues.)

Lower Court Appeal (LCA): A category of civil cases involving non-traffic and civil appeals from a justice of the peace or municipal court.

M.

Magistrate: Often used to refer to a municipal court judge. A.R.S. § 1-215 provides a broad definition that includes all those judicial officers having the power to issue a warrant for arrest, i.e., a supreme court justice, superior court judges, justice of the peace courts and municipal courts.

Mandate: An order or command issued by a judge or court directing enforcement of the court's decision; can be from an appellate court directing action by a lower court from which an appeal was taken.

Maternity: The legal acknowledgment of the parental relationship between a mother and her child.

Mediation: A process by which parties are encouraged to reach agreements in their case prior to a court hearing.

Mediator: A neutral person appointed by the court to help disputing parties reach an agreement, not necessarily an attorney.

Medical Director of a Mental Health Agency: A psychiatrist, or licensed physician experienced in psychiatric matters, designated in writing by the governing body of the agency as the person in charge of the agency's medical services, or a psychiatrist designated by the governing body to act for the director. The term includes the superintendent of the state hospital.

Medical Malpractice Action: An action for injury or death brought against a health care provider, alleging negligence, misconduct, errors, omissions or breach of contract in the rendering of health care, medical or nursing services or other health-related services or for the rendering of such care or services without express or implied consent. Examples of health care providers include physicians, hospitals and their employees who provide such care or services.

Mental Health Agency: Any private or public facility that is licensed by this state as a mental health treatment agency, psychiatric hospital, psychiatric unit of a general

hospital or residential treatment center for emotionally disturbed children and that uses secure settings or mechanical restraints.

Minor/Minor Child: A person who is under 18 years of age.

Minor Ward: A minor for whom a guardian has been appointed solely because of minority.

Minute Entry: An official record summarizing specific events of a court proceeding. Created by the courtroom clerk. Includes future court dates, findings and rulings on cases. Distributed to attorneys and/or parties, and the original is filed and placed in the court file.

Moot: A subject for argument; unsettled; undecided or no longer requiring decision. A moot point is one not settled by judicial decision.

Mortgage: (probate law) Any conveyance, agreement or arrangement in which property is encumbered or used as security.

Motion: A written application to the court to obtain a ruling, order or direction; a formal written request to the court asking that a specific action be taken.

Motion in Limine: A motion often used to limit or exclude specific evidence or a specific issue from a trial.

Motion to Set and Certificate of Readiness: A motion by any party to a lawsuit to cause a case to be set for trial, in which the party certifies readiness for trial.

Municipal Court (Limited Jurisdiction): A limited jurisdiction court that handles misdemeanor crimes and petty offenses and city ordinance and code violations and issues orders of protection and injunctions against harassment.

Municipal Court Judge: A person appointed to serve as a judge in a city court or municipality. Qualifications are set by the municipality, not necessarily required to be an attorney.

N.

Neglect/Neglected: The inability or unwillingness of a parent, guardian or custodian of a child to provide that child with supervision, food, clothing, shelter or medical care if that inability or unwillingness causes substantial risk of harm to the child's health or welfare, except if the inability of a parent or guardian to provide services to meet the needs of a child with a disability or chronic illness is solely the result of the unavailability of reasonable services.

Net Income: Disposable earnings.

Next Best Friend: A person acting in a legal proceeding for the benefit of an infant or other person without being formally appointed as guardian.

No Bill: The opinion of the grand jury that evidence was insufficient to warrant the return of a formal charge.

“No Bond” Status: A defendant’s status of ineligibility for pretrial release. This occurs in capital crimes and crimes where proof is evident and presumption great and in a case where there has been a previous failure to appear or a violation of probation or when a defendant commits a new crime while on release and proof is evident and presumption great.

No Contest Plea/Nolo Contendere: A plea whereby a defendant does not admit guilt but agrees not to contest the State’s charges against him/her. A no contest plea is treated the same as a guilty plea for sentencing.

Nolo Contendere: See “No Contest Plea/Nolo Contendre”.

Non-Classified Civil: A category of civil cases for those types of cases that do not fit in the other specific categories; examples: quiet title actions, name changes.

Nonresident Decedent: A decedent who was domiciled in another jurisdiction at the time of the decedent’s death.

Not Guilty Plea: A plea whereby a defendant denies guilt and the State must prove the criminal charges against him/her. The State is represented by the city or county prosecutor’s office.

Notice: A notation to the court that an action has taken place or that a document has been filed.

Notice of Appointment of Arbitrator: A notice sent by court administration to the parties that an arbitrator has been appointed.

Notice of Change of Judge: A document that proclaims the right of each side in any action pending in court, except Arizona Tax Court, to a change of one judge and one court commissioner. See Rule 42(f)(1)(A), *Arizona Rules of Civil Procedure* and Rule 10.2, *Rules of Criminal Procedure*. The notice must be timely and filed and served by a party who has not waived the right.

Notice of Change of Judge/Commissioner for Cause: A document that proclaims a party’s right to ask for a change in judicial officer due to an implied or perceived improper action committed by the judicial officer. These are handled by the departmental presiding judge.

Notice of Dismissal: A document filed by a plaintiff advising a defendant that a suit is being dropped.

Nunc Pro Tunc: (“Now for then”) Used in minute entries to give retroactive effect to acts as though they had been done previously. Usually used to correct an oversight or error.

O.

OSC (Order to Show Cause): A court order requiring a party to appear in court and show cause why the party applying for the order should not have requested relief.

Obligee: A person to whom support is owed.

Obligor: A person ordered to make support payments.

Omnibus Hearing: See “Pretrial Conference”.

150-Day Minute Entry: A minute entry issued by court administration on behalf of the civil presiding judge approximately 150 days after the initial filing of a complaint. The purpose is to move cases forward according to the rules and prepare cases for trial. The minute entry directs parties to file documents, most of which are required by Rule 38.1, *Arizona Rules of Civil Procedure*.

Oral Argument: A hearing at which parties have an opportunity to make oral presentations of their positions to the court.

Order: A document signed by a judge/commissioner/hearing officer, enforceable by law.

Order of Assignment/Wage Assignment: A court order directing that deductions be taken from wages or other income to pay current or past due child support or spousal maintenance.

Order of Confinement/Commitment Order: An order needed to remand a defendant to the custody of the sheriff, prepared by the clerk and signed by the judge.

Order of Protection: A court order prohibiting a person from committing acts of domestic violence or contacting people protected by the order. Also provides several kinds of protective relief, such as removing firearms from the home, adding other people to the protective order and exclusive use of the home. The plaintiff and defendant must meet one of the following criteria for the relationship test: married now or in the past, live together now or lived together in the past, parent of a child in common, one party is pregnant by the other, or the parties are relatives (parent, in-law, brother, sister, or grandparent).

Order to Appear: (Commonly referred to as an Order to Show Cause) A legal document ordering a person to appear before the court and explain why the relief requested in a petition should not be granted.

Order to Show Cause (OSC): A court order requiring a party to appear in court and show cause why the party applying for the order should not have requested relief.

Organization: A corporation, business trust, estate, trust, partnership, joint venture, association, government, governmental subdivision or agency or any other legal or commercial entity.

Own Recognizance (O.R.): A release without the posting of any bond or security.

P.

PCR (Post-Conviction Relief): A petition filed by a defendant after sentencing requesting a change in his sentence, a new trial, etc. A Rule 32 Petition is sometimes referred to as PCR.

Paralegal: A person who assists a lawyer in duties related to the practice of law but is not a licensed attorney.

Parent: The lawful and natural father or mother of a person; the word does not mean grandparent or ancestor, but can include an adoptive parent as a replacement for a natural parent.

Parenting Time: (Commonly referred to as Visitation) The time that a parent is scheduled to spend with a child pursuant to court order.

Party: A person or governmental agency named in a case; a person engaged in a lawsuit; a plaintiff/petitioner or defendant/respondent.

Paternity: A court action to determine whether an alleged father is biologically the father of a child and, as such, responsible for support and entitled to parenting time or custody.

Payor: The person or agency who pays or is obligated to make periodic payments to an obligor; a trustee, insurer, business entity, employer, government, governmental agency or subdivision or any other person authorized or obligated by law or a governing instrument to make payments.

Pendente Lite: "Pending litigation."

Person: A person or an organization.

Personal Representative: An executor, administrator, successor personal representative, special administrator and any person who performs substantially the same function under the law governing their status. A general personal representative excludes a special administrator.

Personalty: Personal property as distinguished from real property.

Petit (Trial) Jury: The group of people selected to decide the facts and render a verdict in a civil or criminal trial.

Petition: A legal form of pleading used to raise an issue to the court; a written request to the court for an order after notice. May take many forms, but the ultimate goal is the issuance of an order to appear requiring the parties to appear to litigate the issues in the petition. (juvenile law) A written statement of the essential facts that allege delinquency, incorrigibility or dependency.

Petition for Dissolution: The initial pleading that allows a party to ask the court to end or dissolve a marriage.

Petition for Writ of Certiorari: A document which a losing party files with the Supreme Court asking the Supreme Court to review the decision of a lower court. It includes a list of the parties, a statement of facts of the case, the legal questions presented for review and arguments as to why the Court should grant the writ.

Petitioner: A person bringing an action by petition rather than by complaint; the party who filed a petition with the court. The party who files the first petition in any action is deemed the petitioner for the pendency of the case, even though either party may file a petition on separate issues at later times under the same case number.

Plaintiff: The party who files a complaint or initiates a lawsuit.

Plea: The response of a defendant to the criminal charges stated.

- **Guilty Plea:** A defendant's admission that he/she committed the acts charged in the complaint, that the acts are prohibited by law and that he/she has no legal defense for such acts.
- **Not Guilty Plea:** A plea whereby a defendant denies guilt and the State must prove the criminal charges against him/her. The State is represented by the city or county prosecutor's office.
- **No Contest Plea (Nolo Contendere):** A plea whereby a defendant does not admit guilt but agrees not to contest the State's charges against him/her. A no contest plea is treated the same as a guilty plea for sentencing.

Plea Bargain: A process between the accused and the prosecution to negotiate a mutually satisfactory outcome of the case.

Pleading: The formal written allegations setting forth the claims and defenses of the parties to a lawsuit.

Post-Conviction Relief (PCR): A petition filed by a defendant after sentencing requesting a change in his sentence, a new trial, etc. A Rule 32 Petition is sometimes referred to as PCR.

Post Decree/Judgment: An action taking place in a case after the initial decree or judgment has been entered which would ordinarily have terminated the case.

Pre-Decree/Judgment: An action taking place in a case prior to the entering or signing of a final decree or judgment which would terminate the case.

Preliminary Hearing: A hearing to determine probable cause.

Presentence Hearing: A hearing held prior to sentencing to provide the court with information that would either enhance or lessen a sentence. Also see “Aggravation/Mitigation Hearing”.

Presentence Report: A report prepared by an Adult Probation Officer to aid the court at sentencing.

Presigned Waiver: A waiver, signed before a court of record, wherein a person gives his/her consent to be returned to the state when he/she is accused of committing a crime, escaping from confinement or breaking terms of bail, probation or parole.

Pretrial Conference: A hearing set 21 days prior to the date of a trial. A case status report is usually filed at this time. Pleas are considered, due dates for motions are determined and a firm trial date may be set. The court may vary this time frame in a number of ways depending on the judicial officer’s individual preferences.

Prevention: The creation of conditions, opportunities and experiences that encourage the development of healthy, self-sufficient children and that occur before the onset of problems.

Prima Facie: A fact presumed to be true unless disproved by some other evidence.

Pro Bono Publico: For the welfare of the whole; an attorney may take a case “pro bono”.

Proceeding: An action at law and suit in equity.

Pro Hac Vice (pro-hock-vee-chay): A request by an out-of-state attorney not admitted to practice in Arizona, through an Arizona attorney, to practice on a limited basis for a particular party/case. See Rule 33(d), *Rules of the Supreme Court*.

Probable Cause: Reasonable grounds to believe that certain facts justify further police action, such as search and seizure or arrest.

Probate Registrar: The official of the court who handles all informal proceedings and appointments, affidavits of succession to real property, proof of authority bonds and other miscellaneous filings, and reviews files and issues minute entries as needed.

Pro Per/Pro Se: A person who does not hire a lawyer and appears for himself/herself in court.

Property: Both real and personal property or any interest in real and personal property and anything that may be the subject of ownership.

- **Personal Property:** Includes money, goods, chattels, dogs, things in action and evidences of debt. A.R.S. § 1-215.

- **Real Property:** Coextensive with lands, tenements and hereditaments. A.R.S. § 1-215.

- **Community Property:** Property, other than a gift or inheritance to one party, that spouses acquire during the marriage. Each spouse has a one-half interest in community property, regardless of who has title to it.

- **Separate Property:** Property that a spouse acquired before the marriage, or during the marriage through a gift or an inheritance. Separate property belongs entirely to that one spouse.

- **Insurance:** Certain types of insurance policies have a cash value, which can be divided between the spouses at the time of the divorce.

- **Retirement/Work Related Benefits:** Any pension, profit sharing, 401K or retirement plan or IRA account which is given to a spouse by an employer. If these benefits are given during the marriage, the court may give each spouse a share in that benefit even though only one spouse's employer gave such benefits.

Protected Person: A minor or any other person for whom a conservator has been appointed or any other protective order has been made.

Protective Proceeding: A proceeding to determine that a person cannot effectively manage or apply his estate to necessary ends, either because he lacks the ability or is otherwise inconvenienced or because he is a minor, and to secure administration of his estate by a conservator or other appropriate relief.

Protective Supervision: Supervision ordered by the juvenile court of children who are found to be dependent or incorrigible.

Punitive Damages: Damages in excess of actual damages incurred by a plaintiff and awarded as a measure of punishment for a defendant's wrongful and malicious acts.

Q.

QDRO (Qualified Domestic Relations Order): A document signed by the court after a decree is granted ordering an employer to divide certain retirement/work-related benefits between the former spouses.

Qualified Domestic Relations Order (QDRO): A document signed by the court after a decree is granted ordering an employer to divide certain retirement/work-related benefits between the former spouses.

Quash: (family law) To stop or end an order, commonly used in reference to an order of assignment. (criminal law) To nullify or make void a bench warrant or an order.

Quid Pro Quo: “Something for something.”

Quiet Title Action: A suit to settle claims to rightful ownership of property.

R.

Referee: A type of master appointed by a court to assist with certain proceedings.

Referral: (juvenile law) A report submitted to the juvenile court alleging that a child is dependent or incorrigible or that a juvenile has committed a delinquent or criminal act.

Registered: Applies to mail, includes certified mail.

Registrar: The official of the court designated to perform the functions of the registrar.

Release Order: An order prepared by the clerk and signed by the judge releasing a defendant from custody.

Remand: (civil law, family law) To send a case back to another court or agency for further action. (criminal law) To return a case to a lower court or grand jury for further proceedings.

Remittitur: To reduce the amount of a verdict when damages awarded by the jury appear to be excessive.

Replevin Action: A suit in which an owner seeks to regain possession of specific personal property that has been taken or held by another party.

Request for Assignment: A request for an order of assignment to deduct from an obligor’s wages in order to pay support.

Request to Stop: A motion to quash as it relates to a wage assignment.

Resolution Management Conference: An initial hearing before a judicial officer in an effort to resolve issues prior to the final entry of decree or judgment in a contested case.

Respondent: The receiving or defendant party in a case; a person who answers a petition.

Response/Answer: A written reply to any document requesting court action.

Revocation Arraignment: A hearing based on a petition to revoke probation filed by a Probation Officer, to give the probationer an opportunity to admit or deny such allegations.

Revoke: To cancel or nullify a legal document.

Rule 11 Prescreen: A hearing to determine if a formal Rule 11 hearing needs to be conducted in order to determine if a defendant is competent to help in his/her defense at trial or was incompetent at the time of the commission of the offense. A formal Rule 11 hearing is held before a criminal court commissioner.

Rule 26.5 Hearing: A hearing to determine a defendant's mental condition, ability to be rehabilitated and/or risk to the community. A Rule 26.5 report is prepared for sentencing purposes.

Rule 32: See "Post-Conviction Relief".

Rule 609 Hearing: A hearing to determine if a witness's prior conviction can be used to impeach his testimony. This includes defense and prosecution witnesses and the defendant.

S.

Sanction: A penalty or punishment provided as a means of enforcing obedience to a law.

Search Warrant: An order, in writing, issued by a justice or other magistrate in the name of the State, directed to a sheriff, constable or other officer, commanding him/her to search a specified house, shop or other premises.

Secure Care: Confinement in a facility that is completely surrounded by a locked and physically secure barrier with restricted ingress and egress.

Secured Appearance Bond: A bond secured by a specific amount of money to ensure a defendant's presence at required court proceedings.

Security: May be cash, a paper bond, through a bondsman or any property of value deposited with the clerk to secure an appearance bond. The value of such property shall be determined by the Clerk of the Court. (probate law) Any note; stock; treasury stock; bond; debenture; evidence of indebtedness; certificate of interest or participation in an oil, gas or mining title or lease or in payments out of production under that title or lease; collateral trust certificate; transferable share or voting trust certificate and, in general, any interest or instrument commonly known as a security or certificate of interest or

participation or temporary or interim certificate, receipt or certificate of deposit for or any warrant or right to subscribe to or purchase any of these securities.

Sentence: The judgment by the court and imposition of a penalty upon a defendant after a determination of guilt by plea or verdict.

Separate Property: Property that a spouse acquired before the marriage, or during the marriage through a gift or an inheritance. Separate property belongs entirely to that one spouse.

Serious Emotional Injury: An injury that is diagnosed by a medical doctor or a psychologist that includes one or a combination of the following: seriously impairs mental faculties; causes serious anxiety, depression, withdrawal or social dysfunctional behavior to the extent that the child suffers dysfunction that requires treatment; is the result of sexual abuse, sexual conduct with a minor, sexual assault, molestation of a child, child prostitution, commercial sexual exploitation of a minor, sexual exploitation of a minor or incest.

Serious Physical Injury: An injury that is diagnosed by a medical doctor and that does any one or a combination of the following: creates a reasonable risk of death; causes serious or permanent disfigurement; causes significant physical pain; causes serious impairment of health; causes the loss or protracted impairment of an organ or limb; is the result of sexual abuse, sexual conduct with a minor, sexual assault, molestation, child prostitution, commercial sexual exploitation of a minor, sexual exploitation of a minor or incest.

Service/Service of Process: The legally required method of delivering notice or documents; the delivery of a summons, subpoena, writ or other legal document to the opposing party in a lawsuit. The most common method of service is personal service by a private process server or the sheriff. Process servers are listed in the yellow pages. Other methods of service are available.

Sentencing Hearing: A hearing held to formally pronounce sentence upon a defendant.

Set Aside: (expungement) To annul or vacate a judgment or order.

Settlement: (probate law) As it relates to a decedent's estate, includes the full process of administration, distribution and closing. (civil law) No agreement or consent between parties or attorneys in any matter is binding if disputed, unless made in writing or orally in open court or entered in the minutes. See Rule 80(d), *Arizona Rules of Civil Procedure*. (family law) Agreements between parties shall be binding if they are in writing or made or confirmed on the record before a judge, commissioner, judge pro tempore, court reporter or other person authorized by local rule or administrative order to accept such agreements. See Rule 69, *Arizona Rules of Family Law Procedure*.

Sexually Violent Person: An inmate serving a sentence in prison for a sexual crime and determined by a medical professional to be a “potentially violent person” under A.R.S. § 13-4603.

Shelter Care: The temporary care of a child in any public or private facility or home that is licensed by this state and that offers a physically nonsecure environment that is characterized by the absence of physically restricting construction or hardware and that provides the child access to the surrounding community.

Simplified Modification: A procedure in which a person paying or receiving child support attempts to show that, because of a change in circumstances, the current child support order should be modified.

Special Action: A special review of lower court decisions that is available only when an appeal would not be an adequate remedy.

Special Administrator: A person appointed informally by the registrar on the application of any interested person when necessary to protect the estate of a decedent prior to the appointment of a general personal representative or if a prior appointment has been terminated. In a formal proceeding by order of the court on the petition of any interested person and finding, after notice and hearing, that appointment is necessary to preserve the estate or to secure its proper administration including its administration in circumstances where a general personal representative cannot or should not act. If it appears to the court that an emergency exists, appointment may be ordered without notice. The appointment of a special administrator terminates in accordance with the provisions of the order of appointment or on the appointment of a general personal representative or is subject to termination as provided in the statutes.

Special Master: A person appointed by the court to help parents resolve disputes about what is best for a child.

Spousal Maintenance: (Commonly referred to as Alimony) Court ordered monies paid from one spouse to the other.

State: A state, district, territory, possession or commonwealth of the United States.

Stay: A temporary stop or delay in a judicial proceeding.

Stipulation: An agreement or joint motion between the parties in a lawsuit or legal action.

Strike: To delete or cancel.

Strike List: Used when a case is on the arbitration calendar. A document mailed to parties allowing them to strike or delete the names of those persons whom they do not want to be appointed as arbitrator.

Subpoena: An order to a witness to appear and give testimony in court or at a deposition; an order to appear in court.

Subpoena Duces Tecum: An order to a witness to produce documents.

Subrogation: The substitution of one person for another as a credit.

Subsequent Employer: Any employer, other than the first employer of an obligor upon whom an order of assignment (wage assignment) has been served. A subsequent employer must honor the order of assignment as the first employer did.

Successor Personal Representative: A personal representative, other than a special administrator, who is appointed to succeed a previously appointed personal representative.

Successors: Persons, other than creditors, that are entitled to property of a decedent under a will or this title.

Summons: Written notification served on a person warning that person to answer or appear in court within a specified period of time; a document ordering a party to appear in court by way of a filed answer.

Superior Court (General Jurisdiction): A general jurisdiction court; has the authority to hear all legal actions not exclusively assigned to another court.

Supersedeas Bond: A bond that a court requires from an appellant who wants to delay payment of a judgment until the appeal is over.

Supervening Indictment: An indictment issued when a defendant has had an initial appearance, and the case has been set for a preliminary hearing in justice court, but meanwhile the State has indicted the defendant by grand jury proceedings. All justice court proceedings are therefore vacated.

Supervised Administration: A proceeding to secure complete administration and settlement of a decedent's estate under the continuing authority of the court which extends until entry of an order approving distribution of the estate and discharging the personal representative or other order terminating the proceeding. A supervised personal representative is responsible to the court, as well as to the interested parties, and is subject to directions concerning the estate made by the court on its own motion or on the motion of any interested party. A supervised personal representative has the same duties and powers as a personal representative who is not supervised.

Supervised Parenting Time: Parenting time by a parent with that parent's child while another adult, usually a person other than the custodial parent, is present.

Supervised Release: The release of a defendant on his/her own recognizance, subject to the supervision, restrictions and conditions of the Pretrial Services Agency.

Support Order: Any order entered by the court for the payment of support. Support may include payment for medical, dental and other health care; child care and education expenses as well as spousal maintenance.

Suppress: To forbid the use of evidence at a trial because it is improper or was improperly obtained.

Supreme Court: The highest court in the State of Arizona; the Court of Last Resort; hears cases appealed to the supreme court from lower courts and death penalty cases from superior court.

Surety: One, other than the person released, who executes an appearance bond and binds himself/herself to pay its amount if the person released fails to comply with its condition.

Survive: A person has neither predeceased an event, including the death of another person, nor is deemed to have predeceased an event.

T.

TANF (Temporary Aid to Needy Families): State financial assistance to low income families.

TRO (Temporary Restraining Order): An emergency order forbidding a party from taking an action in a case; an emergency order restricting a party or parties from committing a threatened act until a hearing is held on the issues. Common reasons for a TRO would be to forbid the sale of property, disposal of assets or removal of a child from the jurisdiction.

Temporary Aid to Needy Families (TANF): State financial assistance to low income families.

Temporary Order: An order issued by the court to establish certain issues until a final judgment or decree is entered.

Temporary Restraining Order (TRO): An emergency order forbidding a party from taking an action in a case; an emergency order restricting a party or parties from committing a threatened act until a hearing is held on the issues. Common reasons for a TRO would be to forbid the sale of property, disposal of assets or removal of a child from the jurisdiction.

Termination of Parental Rights: A judicial order ending a parent's legal relationship with that parent's child.

Testacy Proceeding: A proceeding to establish a will or determine intestacy.

Testator/Testatrix (male/female): One who has made a legally valid will before death.

Third-Party Complaint: A complaint filed by a defendant, as a third-party plaintiff, against a person not a party to the action who is or may be liable to the third-party plaintiff for all or part of the plaintiff's complaint against the third-party plaintiff.

Third-Party Release: Release of a defendant under the supervision of a third party in accordance with the court's order. The third party shall use every effort to assure the appearance of a defendant at all scheduled hearings; immediate notification to the court if a defendant violates any conditions of release or disappears.

Title 36 Guardianship: A guardianship appointed for a person found to be gravely disabled as a result of a mental disorder in a proceeding for that purpose under Arizona's mental health statutes.

Tort: A civil (not criminal) wrong committed by one person against another; a violation of a legal duty that one person has toward another, except when it involves breach of contract.

Tort Motor Vehicle Action: Any action for damages for personal injury, property damage or wrongful death arising out of an automobile accident, collision or other operation of a motor vehicle.

Tort Non-Motor Vehicle Action: Any tort action not included under tort motor vehicle except medical malpractice and breach of contract actions. Examples: libel and slander, personal injury, fraud and property damage resulting from other than operation of a motor vehicle.

Transcript: The official verbatim record of testimony at a trial or hearing taken by a court reporter.

Trial: A proceeding in court to decide a controversy whereat parties may be called upon to testify and evidence is taken; may be to the court (before only a judge) or to a jury; a court hearing when all contested issues are presented to the judge for a decision.

Trial de Novo: A new trial or retrial held in an appellate court in which the entire case is heard as if no trial had been heard in the lower court or administrative agency.

True Bill: An indictment returned by the grand jury.

Trust: Includes an express trust, private or charitable, with any additions, wherever and however created. Also includes a trust created or determined by judgment or decree under which the trust is to be administered in the manner of an express trust.

Trustee: A person or organization appointed to manage a trust.

U.

UCCJEA (Uniform Child Custody Jurisdiction and Enforcement Act): A law that helps the court determine which state has jurisdiction regarding custody.

URESA (Uniform Reciprocal Enforcement Act): A law that provides a way to establish and enforce support obligations when the obligor lives in one state and the obligee and child live in another, allowing one state to honor and enforce another state's orders. Reciprocal matters involving both interstate and local support issues in this state are commonly handled by the Attorney General's Office.

Uncontested: Matters before the court in which parties have not expressed disagreements.

Under Advisement: After hearing oral argument, the judge may rule while on the bench or later in chambers. When ruling later in chambers, the matter is referred to as "taken under advisement."

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Unsecured Appearance Bond: A bond that is not secured by any deposit of or lien upon property.

V.

Vacate: To remove a hearing from the court's calendar.

Venue: The county, city, judicial district or geographical area over which a certain court has power to exercise jurisdiction.

Violation Hearing: A hearing to determine whether a probationer has violated a written condition or regulation of probation.

Visitation: (Now referred to as Parenting Time or Access) The amount of time established by the court that a child spends with a non-custodial parent or grandparent.

Voluntariness Hearing: A hearing to determine whether or not a defendant's statements to a police officer were made involuntarily.

Voir Dire: The jury selection phase of a trial; a preliminary examination of a prospective juror by a judge or lawyer to decide whether the prospect is qualified and suitable to serve on a jury.

W.

Wage Assignment: (family law) A court order to attach a person's pay check for payment of child support, spousal maintenance or arrearages of child support or spousal maintenance.

Waived Fees: Court fees that are not required to be paid because of the financial condition or situation of the party.

Ward: A person for whom a guardian has been appointed.

Warrant: An order to law enforcement to take a person into custody.

Warrant for Immediate Production: (Formerly known as a Writ of Habeas Corpus in family court) An action of one party attempting to retrieve a child from another party. Oftentimes, a party without proper authority to have a child will remove the child from the proper jurisdiction and bring the child to Arizona. The party with authority to have custody will follow and attempt to retrieve the child by filing their orders with the Clerk of the Court (domesticating a foreign judgment) and approaching the judicial officer with a request to have the child returned.

Will: Includes codicil and any testamentary instrument that merely appoints an executor, revokes or revises another will, nominates a guardian or expressly excludes or limits the right of a person or class to succeed to property of the decedent passing by intestate succession.

With Prejudice: Charges dismissed "with" prejudice cannot be re-filed against a defendant. See "Dismissal with Prejudice".

Without Prejudice: Charges dismissed "without" prejudice can be re-filed against a defendant. See "Dismissal without Prejudice".

Witness: One who testifies under oath at a trial or hearing about what he/she has seen, heard, knows or has an opinion about.

Writ: A formal order of the court ordering a person to do or not to do something.

Writ of Certiorari: A writ by which an appellant seeks the review of a case by the Supreme Court of the United States. When the writ is granted, the court orders the lower court to send up the record of the case for review.

Writ of Habeas Corpus: An independent proceeding instituted to determine whether a defendant is being deprived unlawfully of his/her liberty; a procedure triggered by a defendant who attempts to show that his/her imprisonment is unlawful.

Writ of Execution: A writ to put in force the judgment or decree of the court.

Writ of Garnishment: (civil law) A court order to a lending institution or employer to attach a person's bank accounts or pay check for monies to repay a debt.

Writ of Replevin: A court order authorizing an officer to seize and hold the property involved in a suit of replevin.

Writ of Restitution: When the court orders a defendant to vacate the premises, the court also will order a writ of restitution issue on a specified date. This order is entered in the event the tenant refuses to move. In this event, the Clerk of the Court is authorized to issue a writ of restitution to the sheriff commanding him/her to forcibly remove the tenant and restore possession of the property to the plaintiff.