

Arizona's Roadmap to Divorce, Part 2: Getting Started and Knowing What Lies Ahead

By Scott David Stewart

In **Part 1** of this roadmap to divorce series, we introduced the first nine steps, as the case winds its way through Arizona's family court system.

#10: Best Interests Attorney.

A party may ask that a *Best Interests Attorney (BIA)* be appointed for the child – the focus is on the child, not the parents. Acting independently, the BIA makes recommendations to the court on what is in the child's best interests. Once appointed, the BIA is included on all court dates, reports, pleadings, and essentially every issue involving the child.

#11: Temporary Orders.

When a case is pending, the court may issue interim orders for relief as needed prior to trial. These *Temporary Orders* govern the parties' actions while the case is ongoing. In these interim orders, the judge may address parenting time, child support, spousal maintenance, and other issues needing expedited attention in the case.

#12: Resolution Management Conference.

Either party may request a *Resolution Management Conference (RMC)*, although the court may decide on its own initiative whether to schedule an RMC. This conference is used for scheduling court dates, deadlines, and trial dates. The RMC provides the parties with a roadmap for the remainder of their case. *Mediation, ADR Settlement Conferences*, discovery response deadlines, and other dates may be set at the RMC.

#13: ADR Settlement Conference.

Alternative Dispute Resolution (ADR) often helps parties settle issues without the need for trial. When an *ADR Settlement Conference* is scheduled, a commissioner or judge pro tem is appointed to oversee the conference and offer an opinion on the likelihood of success of each party's position. The opinion isn't binding on the parties, and the judge assigned to their case isn't a participant. This conference can be very useful in resolving cases and can lead to breakthroughs in negotiations.

#14: Mediation.

Another form of ADR is *Mediation*. The parties meet with a *Mediator* and discuss remaining issues to again attempt total or partial agreement. The parties' attorneys are not permitted to attend the session. *Mediation* is confidential -- what is discussed is not divulged to anyone, not to the attorneys and not to the judge in the case. When private *Mediation* is arranged for, any issue may be mediated. In Arizona, the court may order *Mediation* of parenting time issues as part of a court program. In any case, when an agreement is reached on any or all of the issues, the *Mediator* memorializes the agreement and forwards it to the judge to sign as an order.

#15: Parenting Conference.

Either party may also request that the court schedule a *Parenting Conference* with a court-appointed provider. As with *Mediation*, the parties' attorneys do not attend the *Parenting Conference*. Matters raised in the conference may be addressed by the court, however, so it is not a confidential process. At the conclusion of the conference, the provider issues a report to the court with his or her findings and conclusions.

#16: Trial Litigation.

When the parties simply cannot resolve every issue in their family case, a trial becomes necessary. And trials involve risk. There is no certainty on how a judge will decide an issue. In every trial, the decision-making authority is relinquished to the judge – it is no longer in the hands of the parties.

Appeal. If a party disagrees with the trial court's decision, then he or she can appeal by right. Realistically, though, the success rate on appeal is very limited. A reversal of the trial court's decision may occur if the judge was clearly out of bounds, having reached a decision that was unsupported by the evidence adduced at trial. A reversal might also occur when there is newly discovered evidence. In most appeals, however, a judge's trial decision will not be overturned unless there was clearly an abuse of judicial discretion. Consequently, most trial decisions are final.

That probable finality, in and of itself, should sufficiently encourage the parties to put aside their hostilities and, instead, sincerely attempt settlement while they have decision-making control of their case.