RULE 69 ENFORCEMENT WRITTEN MATERIALS

BY

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I.

RULE 69 AND FAMILY LAW SETTLEMENT AGREEMENTS: WHEN IS A DEAL A DEAL?

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RULE 69 AND FAMILY LAW SETTLEMENT AGREEMENTS: WHEN IS A DEAL A DEAL?

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I. INTRODUCTION

Rule 69 of the Arizona Rules of Family Law Procedure ("ARFLP") regarding binding settlement agreements is undoubtedly one of the most widely used rules in family law. Nearly every case involves some form of a settlement agreement. Most who enter into settlement agreements want them to be binding, while others want to get out of them and judges must review and approve them to be valid. Unfortunately, many have learned that litigating settlement agreements can cost more than the original action. Therefore, it is extremely important that both the court and parties to a case have a correct understanding of Rule 69 and its uses.

II. HISTORY

Rule 69 was originally adopted effective January 1, 2006, with very basic language.[1] The original language was an

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[1] ARIZ. FAM. LAW PROC. R. 69; "Agreements between the parties shall be valid and binding if the agreement is in writing, or the terms of the agreement are set forth on the record before a judge, commissioner, judge pro tempore, court reporter, or other person authorized by local rule or Admin-

outgrowth of Rule 80(d) of the Arizona Rules of Civil Procedure ("ARCP"),[2] which was in force prior to the adoption of separate family law rules. The present version of Rule 69 became effective January 1, 2011. It added provisions concerning the three types of valid settlement agreements, a presumption of validity, the burden of proof on the party challenging the agreement, a reference to Arizona Revised Statutes (A.R.S.) § 25-317 regarding the court's independent discretion, and confirmation that attorney's fees and costs may be awarded in disputed proceedings. It states:

> A. An Agreement between the parties shall be valid and binding if
>
> 1. the agreement is in writing, or
>
> 2. the terms of the agreement are set forth 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, or
>
> 3. the terms of the agreement are set forth on any audio recording device before a mediator or settlement conference officer appointed by the court pursuant to Rule 67.
>
> B. Any agreement entered into by the parties under this rule shall be presumed to be valid and binding, and it shall be the burden of the party challenging the validity of the agreement to prove any defect in the

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istrative Order to accept such agreements."

[2] ARIZ. CIV. PROC. R. 80(d); "No agreement or consent between parties or attorneys in any matter is binding if disputed, unless it is in writing, or made orally in open court, and entered in the minutes."

> agreement, except that nothing herein shall preclude the court from exercising its independent discretion pursuant to A.R.S. § 25-317. Pursuant to A.R.S. § 25-324, the court may award a party the cost and expenses of maintaining or defending a proceeding to challenge the validity of an agreement made in accordance with this rule.

There are no proposed amendments at this time, although there are definitely areas of the Rule that may need to be amended or clarified, as more thoroughly explained below.

Despite the fact that Rule 69 was only adopted in 2006, there have been a number of appellate cases that cite the Rule. However, few of them are reported decisions which may be used as authority. Most are memorandum decisions, which may not be cited as legal precedent.[3] Nevertheless, they are referenced throughout this article for illustrative and educational purposes only. Also, the decision in *Reeder*[4] was depublished and no longer a valid reference. Moreover, as stated in the Committee Comment to Rule 69,[5] as well as several memorandum decisions[6] and one published opinion,[7] one can look to

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[3] ARIZ. SUP. CT. R. 111(c)(1)(C), as amended, allows citation to memorandum decisions issued on or after January 1, 2015, for persuasive value, but only if no opinion adequately addresses the issue before the court and if the citation is not to a depublished opinion or depublished portion of an opinion.

[4] Reeder v. Johnson, No. 1 CA-CV 09-0247, 2010 Ariz. App. Unpub. LEXIS 1603, at ¶¶13-15 (Ct. App. Mar. 23, 2010) (depublished and cited for informational purposes only).

[5] ARIZ. SUP. CT. R. 69 COMM. CMT. (Eff. Jan. 1, 2009).

[6] Connelly v. Connelly, No. 1 CA-CV 15-0290 FC, 2016 WL 7156437, at *1-4 (Ariz. Ct. App. Dec. 8, 2016) (mem.); Fowler v. Fowler, 2015 WL 410594, at *1-4 (Ariz. Ct. App. Jan. 27, 2015) (mem.); Nunez v. Porter, No. CA-SA 14-0067, 2014 WL 2159752, at *1-3 (Ariz. Ct. App. May 22, 2014) (Dec. order); Doyle v. Doyle, No. CA-CV 07-0734, 2008 WL 4966035, at

the case law under Rule 80(d), ARCP, to interpret Rule 69 to the extent it may be applicable.

III. SCOPE

Rule 69 states that it applies to an "Agreement." The specific subject matter of the agreements covered are not identified. However, Rule 1, ARFLP, governs the procedure in "all family law cases" and "all other matters arising out of Title 25." Title 25 includes marriages,[8] covenant marriages,[9] premarital agreements,[10] property rights[11] and contract powers,[12]

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*1-5 (Ariz. Ct. App. Nov. 18, 2008) (mem.).
[7] Murray v. Murray, 367 P.3d 78 (Ariz. Ct. App. 2016).
[8] ARIZ. REV. STAT. ANN. §§ 25-101-30 (2017).
[9] ARIZ. REV. STAT. ANN. §§ 25-901-06 (2017).
[10] ARIZ. REV. STAT. ANN. §§ 25-201-05 (2017).
[11] ARIZ. REV. STAT. ANN. §§ 25-211-17, 318; *In re* Jones, No. 1 CA-CV 15-0803 FC, 2016 WL 6871408, at *1-3 (Ariz. Ct. App. Nov. 22, 2016) (mem.); *In re Marriage of Fuller,* No. 1 CA-CV 15-0680 FC, 2016 WL 4435598, at *1 (Ariz. Ct. App. Aug. 23, 2016) (mem); Gadhok v. Nangia, No. 1 CA-CV 11-0589, 2012 WL 2154194, at *1-4 (Ariz. Ct. App. June 14, 2012) (mem.); Ghosoph v. Kottman, No. 1 CA-CV 14-0356 FC, 2015 WL 3537142, at *1-3 (Ariz. Ct. App. June 2, 2015) (mem.); MacLean v. Kappa, No. 1 CA-CV 13-0512, 2014 WL 2895579, at *1-3 (Ariz. Ct. App. June 24, 2014) (mem.); Bulos-Simpkins v. Simpkins, No. 1 CA-CV 13-0124, 2014 WL 1266381, at *1-7 (Ariz. Ct. App. Mar. 27, 2014) (mem.); Gadhok v. Nangia, No. 1 CA-CV 12-0273, 2013 WL 1136604, at *1-3 (Ariz. Ct. App. Mar. 19, 2013) (mem.); Quinn v. Fitzpatrick-Quinn, No. 1 CA-CV 11-0241, 2012 WL 1861406, at *1-6 (Ariz. Ct. App. May 22, 2012) (mem.); Armor Works Enterprises, LLC v. Cavanagh Law Firm, P.A., No. 1 CA-CV 11-0201, 2012 WL 952348, at *1-7 (Ariz. Ct. App. Mar. 20, 2012) (mem.); Bellings v. Palma, No. 1 CA-CV 10-0822, 2011 WL 5542413, at *1-3 (Ariz. Ct. App. Nov. 15, 2011) (mem.); Watson v. Watson, No. 1 CA-CV 10-0094, 2011 WL 846427, at *1-6 (Ariz. Ct. App. Mar. 10, 2011) (mem.); Allan v. Allan, No. 1 CA-CV 09-0556, 2010 WL 5030874, at *1-5 (Ariz. Ct. App. Nov. 12, 2010) (mem.); Katz v. Siverling, No. 1 CA-CV 08-0235, 2009 WL 1311066, at *1-4 (Ariz. Ct. App. May 12, 2009) (mem.); Burton v. Burton, No. 1 CA-CV 08-0433, 2009 WL 1066000, at *1-2 (Ariz. Ct. App. Apr. 21, 2009) (mem.); Berg-Thaemert v. Thaemert, No. 1 CA-CV 06-0767, 2007 WL 5462303, at *1-6 (Ariz. Ct.

assignment of debts,[13] notice to creditors,[14] credit reports,[15] military retirement benefits,[16] pre-decree proceedings (annulments,[17] legal separations and dissolutions[18]), temporary orders,[19] preliminary injunctions,[20] separation agreements,[21] restoration of requested former name,[22] post-decree modification[23] and enforcement actions,[24] contempt,[25] maternity or paternity,[26]

App. Oct. 23, 2007) (mem.).

[12] ARIZ. REV. STAT. ANN. §§ 25-211-18 (2017).

[13] ARIZ. REV. STAT. ANN. § 25-318(J)-(R); Stephens v. Stephens, No. 1-CA-CV 14-0608 FC, 2016 WL 74938, at *1-4 (Ariz. Ct. App. Jan. 7, 2016) (mem.); Ledo v. Ledo, No. 1 CA-CV 14-0331 FC, 2015 WL 2383843, at *1-3 (Ariz. Ct. App. May 7, 2015) (mem.); *Bulos-Simpkins*, 2014 WL 1266381, at *1-7.

[14] ARIZ. REV. STAT. ANN. § 25-318(H) (2017).

[15] ARIZ. REV. STAT. ANN. § 25-318(I) (2017).

[16] ARIZ. REV. STAT. ANN. § 25-318.01 (2017); Harris v. Harris, 991 P.2d 262 (Ariz. Ct. App. 1999).

[17] ARIZ. REV. STAT. ANN. §§ 25-301-02 (2017).

[18] ARIZ. REV. STAT. ANN. §§ 25-311-13, 316 (2017).

[19] ARIZ. REV. STAT. ANN. § 315 (2017).

[20] *Id.*

[21] ARIZ. REV. STAT. ANN. § 25-317 (2017); Johnston v. Johnston, No. 1 CA-CV 14-0451 FC, 2015 WL 4372813, at *1-3 (Ariz. Ct. App. July 16, 2015) (mem.); Fuller v. Fuller, No. 1 CA-CV 11-0114, 2012 WL 2499671, at *1-4 (Ariz. Ct. App. June 26, 2012) (mem.); Armor Works Enterprises, LLC v. Cavanagh Law Firm, P.A., No. 1 CA-CV 11-0201, 2012 WL 952348, at *1-7 (Ariz. Ct. App. Mar. 20, 2012) (mem.); Archer v. Archer, No. 1 CA-CV 08-0543, 2009 WL 1682146, at *1-3 (Ariz. Ct. App. June 16, 2009) (mem.); *In re* Marriage of Gallagher, No. 1 CA-CV 07-0250, 2008 WL 4149665, at *1-3 (Ariz. Ct. App. Jan. 10, 2008) (mem.).

[22] ARIZ. REV. STAT. ANN. § 25-325(C) (2017).

[23] ARIZ. REV. STAT. ANN. §§ 25-327(A), 403, 503 (2017); McNeil v. Hoskyns, 377 P.3d 46 (Ariz. Ct. App. 2014).

[24] ARIZ. REV. STAT. ANN. §§ 25-414; 518-26; 681-85 (2017).

[25] ARIZ. REV. STAT. ANN. §§ 25-317(E); 318(P) (2017).

[26] ARIZ. REV. STAT. ANN. §§ 25-801-18 (2017); Barnes v. Fink, No. 2 CA-CV 2015-0062, 2015 WL 6549582, at *1-4 (Ariz. Ct. App. Oct. 29, 2015) (mem.); Coleman v. Robinson, No. 1 CA-CV 11-0034, 2011 WL 6101825, at *1-4 (Ariz. Ct. App. Dec. 8, 2011) (mem.); Montano v. Guiliano, No. 1

courts of conciliation,[27] reconciliation agreements,[28] post-marital/post-nuptial agreements,[29] legal decision-making,[30] parenting time,[31] parent information program classes,[32] domestic violence,[33] substance abuse,[34] sexual offenders,[35] access to records,[36] relocation,[37] spousal maintenance,[38] child support,[39]

CA-CV 10-0438, 2011 WL 2306617, at *1-8 (Ariz. Ct. App. June 2, 2011) (mem.); Jackson v. Herrera, No. 1 CA-CV 08-0049, 2009 WL 104661, at *1-2 (Ariz. Ct. App. Jan. 15, 2009) (mem.).

[27] ARIZ. REV. STAT. ANN. §§ 25-381.01-381.24 (2017).

[28] ARIZ. REV. STAT. ANN. § 25-381.17 (2017); Watson v. Watson, No. 1 CA-CV 10-0094, 2011 WL 846427, at *1-6 (Ariz. Ct. App. Mar. 10, 2011) (mem.).

[29] Breitbart-Napp v. Napp, 163 P.3d 1024 (Ariz. Ct. App. 2007).

[30] ARIZ. REV. STAT. ANN. § 25-401 (2017); Burton-Anderson v. Anderson, No. 1 CA-CV 15-0214 FC, 2016 WL 1332059, at *1-2 (Ariz. Ct. App. Apr. 5, 2016) (mem.); Chandler v. Ellington, No. 1 CA-CV 13-0648 FC, 2015 WL 3819094, at *1-4 (Ariz. Ct. App. June 18, 2015) (mem.); Krieger v. Duick, No. 1 CA-CV 14-0036, 2015 WL 246878, at *1-5 (Ariz. Ct. App. Jan. 20, 2015) (mem.); Nunez v. Porter, No. CA-SA 14-0067, 2014 WL 2159752, at *1-3 (Ariz. Ct. App. May 22, 2014) (Dec. order); Bulos-Simpkins v. Simpkins, No. 1 CA-CV 13-0124, 2014 WL 1266381, at *1-7 (Ariz. Ct. App. Mar. 27, 2014) (mem.); *Montano,* 2011 WL 2306617, at *1-8; *Watson,* 2011 WL 846427, at *1-6; *Jackson*, 2009 WL 104661, at *1-2; Berg-Thaemert v. Thaemert, No. 1 CA-CV 06-0767, 2007 WL 5462303, at *1-6 (Ariz. Ct. App. Oct. 23, 2007) (mem.).

[31] ARIZ. REV. STAT. ANN. § 25-40 (2017)1; *Burton-Anderson*, 2016 WL 1332059, at *1-2; Haak v. Haak, Nos. 1 CA-CV 13-0764 FC, 1 CA-CV 14-0183 FC, 2015 WL 1359392, at *1-4 (Ariz. Ct. App. Mar. 24, 2015) (mem.); *Krieger*, 2015 WL 246878, at *1-5; *Nunez*, 2014 WL 2159752, at *1-3; *Bulos-Simpkins*, 2014 WL 1266381, at *1-7; *Montano*, 2011 WL 2306617, at *1-8; *Watson*, 2011 WL 846427, at *1-6; *Jackson*, 2009 WL 104661, at *1-2; *Berg-Thaemert*, 2007 WL 5462303, at *1-6.

[32] ARIZ. REV. STAT. ANN. § 25-413 (2017).

[33] ARIZ. REV. STAT. ANN. § 25-403.03; *Watson,* 2011 WL 846427, at *1-6.

[34] ARIZ. REV. STAT. ANN. § 25-403.04 (2017).

[35] ARIZ. REV. STAT. ANN. § 25-403.05 (2017).

[36] ARIZ. REV. STAT. ANN. § 25-403.06 (2017).

[37] ARIZ. REV. STAT. ANN. § 25-408; Murray v. Murray, 367 P.3d 78 (Ariz. Ct. App. 2016).; Fowler v. Fowler, 2015 WL 410594, at *1-4 (Ariz. Ct. App. Jan. 27, 2015) (mem.).

[38] ARIZ. REV. STAT. ANN. § 25-319 and 327(B) (2017); McNeil v. Hoskyns,

dependency exemptions,[40] extracurricular and extra-education expenses,[41] unreimbursed medical expenses,[42] family support duties,[43] child medical support,[44] orders of assignment/income

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377 P.3d 46 (Ariz. Ct. App. 2014); Ames v. Ames, 370 P.3d 115 (Ariz. Ct. App. 2016); Watson v. Watson, No. 1 CA-CV 10-0094, 2011 WL 846427, at *1-6 (Ariz. Ct. App. Mar. 10, 2011) (mem.); Koons v. Koons, No. 1 CA-CV 08-0073, 2009 WL 179805, at *1-6 (Ariz. Ct. App. Jan. 27, 2009) (mem.); Berg-Thaemert v. Thaemert, No. 1 CA-CV 06-0767, 2007 WL 5462303, at *1-6 (Ariz. Ct. App. Oct. 23, 2007) (mem.).

[39] ARIZ. REV. STAT. ANN. §§ 25-320, 327(C) (2017); *In re* Marriage of D'Amours, No. 1 CA-CV 15-0775 FC, 2016 WL 7209671, at *1-3 (Ariz. Ct. App. Dec. 13, 2016) (mem.); Sharkey v. Sharkey, No. 1 CA-CV 15-0386 FC, 2016 WL 3021979, at *1-3 (Ariz. Ct. App. May 24, 2016) (mem.); Hamblen v. Hamblen, 54 P.3d 371 (Ariz. Ct. App. 2002); Barnes v. Fink, No. 2 CA-CV 2015-0062, 2015 WL 6549582, at *1-4 (Ariz. Ct. App. Oct. 29, 2015) (mem.); Nunez v. Porter, No. CA-SA 14-0067, 2014 WL 2159752, at *1-3 (Ariz. Ct. App. May 22, 2014) (Dec. order); Bulos-Simpkins v. Simpkins, No. 1 CA-CV 13-0124, 2014 WL 1266381, at *1-7 (Ariz. Ct. App. Mar. 27, 2014) (mem.); Quinn v. Fitzpatrick-Quinn, No. 1 CA-CV 11-0241, 2012 WL 1861406, at *1-6 (Ariz. Ct. App. May 22, 2012) (mem.); Sarma v. Iyer, Nos. 1 CA-CV 10-0473, 1 CA-CV 10-0839, 2011 WL 6292212, at *1-4 (Ariz. Ct. App. Dec. 15, 2011) (mem.); Coleman v. Robinson, No. 1 CA-CV 11-0034, 2011 WL 6101825, at *1-4 (Ariz. Ct. App. Dec. 8, 2011) (mem.); *Watson*, 2011 WL 846427, at *1-6; Wehrung v. Kellam, No. 1 CA-CV 09-0014, 2010 WL 845391, at *1-2 (Ariz. Ct. App. Mar. 11, 2010) (mem.); *In re* Marriage of Kalos, Nos. 1 CA-CV 07-0222, 1 CA-CV 07-0773, 2009 WL 415594, at *1-4 (Ariz. Ct. App. Feb. 19, 2009) (mem.); *Berg-Thaemert*, 2007 WL 5462303, at *1-6.

[40] ARIZ. REV. STAT. ANN. § 25-320, Guidelines ¶ 27 (2017); Zaccaria v. Zaccaria, No. 1 CA-CV 08-0524, 2009 WL 1097867, at *1-3 (Ariz. Ct. App. Apr. 23, 2009) (mem.).

[41] ARIZ. REV. STAT. ANN. § 25-320, Guidelines ¶ 9(B)(2) (2017); Gecha v. Gecha, No. 1 CA-CV 11-0130, 2012 WL 1964566, at *1-5 (Ariz. Ct. App. May 31, 2012) (mem.); *Quinn*, 2012 WL 1861406, at *1-6.

[42] ARIZ. REV. STAT. ANN. § 25-320, Guidelines ¶ 9(A) (2017); *Quinn*, 2012 WL 1861406, at *1-6; Branigan v. Fredrickson, No. 1 CA-CV 10-0552, 2011 WL 2462717, at *1-4 (Ariz. Ct. App. June 21, 2011) (mem.).

[43] ARIZ. REV. STAT. ANN. §§ 25-500-685 (2017).

[44] ARIZ. REV. STAT. ANN. §§ 25-531-35 (2017).

withholding orders,[45] the support payment clearinghouse,[46] child support arrest warrants,[47] IV-D cases,[48] third party rights[49] (stepparents, grandparents,[50] *in loco parentis*[51]), the Uniform Child Custody Jurisdiction and Enforcement Act ("UCCJEA"),[52] the Uniform Interstate Family Support Act ("UIFSA"),[53] and attorney fees.[54] Title 25 does not include orders of protection, injunctions against harassment, or Title 8 cases involving dependency, adoptions of children, and severances of parental rights. Nevertheless, the extensive breadth of the subject matter in Title 25 emphasizes the wide coverage of Rule 69.

IV. PURPOSE

The purpose of Rule 69 is to promote an amicable, timely, and less expensive method of resolving family law disputes. Rule 1 of ARFLP expressly states that ARFLP, including Rule 69, should be construed and enforced in a manner "to secure the just, prompt and inexpensive determination of every action and proceeding." Consistent with prior case law under Rule 80(d), ARCP, a corollary purpose of the Rule is also to avoid the necessity of fact-intensive inquiries into the existence

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[45] ARIZ. REV. STAT. ANN. §§ 25-504-07 (2017).
[46] ARIZ. REV. STAT. ANN. § 25-500 *et seq.* (2017).
[47] ARIZ. REV. STAT. ANN. §§ 25-681-85 (2017).
[48] ARIZ. REV. STAT. ANN. § 25-500 *et seq.* (2017).
[49] ARIZ. REV. STAT. ANN. § 25-409 (2017).
[50] Haak v. Haak, Nos. 1 CA-CV 13-0764 FC, 1 CA-CV 14-0183 FC, 2015 WL 1359392, at *1-4 (Ariz. Ct. App. Mar. 24, 2015) (mem.).
[51] Huston v. Sloan, No. 1 CA-CV 11-0583, 2012 WL 2003495, at *1-3 (Ariz. Ct. App. June 5, 2012) (mem.).
[52] ARIZ. REV. STAT. ANN. § 25-1001 (2017); Barnes v. Fink, No. 2 CA-CV 2015-0062, 2015 WL 6549582, at *1-4 (Ariz. Ct. App. Oct. 29, 2015) (mem.).
[53] ARIZ. REV. STAT. ANN. § 25-1201 (2017); *Barnes*, 2015 WL 6549582, at *1-4.
[54] ARIZ. REV. STAT. ANN. § 25-324 (2017); *Haak*, 2015 WL 1359392, at *1-4; Lewis v. Rehkow, No. 1 CA-CV 11-0091, 2012 WL 2154181, at *1-5 (Ariz. Ct. App. June 14, 2012) (mem.).

and terms of a settlement agreement.[55] Despite these laudable objectives, the plethora of trial court litigation and appellate case law arising under Rule 69 suggest that their achievement may be easier said than done.

V. THREE TYPES OF VALID AGREEMENTS

The three types of agreements that Rule 69 recognizes are those that are: (1) in writing; (2) on the record by a person authorized;[56] and (3) recorded on an audio recording device before a Rule 67 mediator or settlement conference officer appointed by the court.

A. In Writing. A written agreement is the first type of agreement recognized as valid under Rule 69. Oral agreements are not binding under Rule 69 or A.R.S. § 25-327.[57] Al-

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[55] Robertson v. Alling, 351 P.3d 352, 355 (Ariz. 2015) ("Rule 80(d) serves to avoid collateral disputes between parties by requiring written evidence of any stipulations and agreements."); Canyon Contracting Co. v. Tohono-O'Odham Housing Authority, 837 P.2d 750, 754 (Ariz. Ct. App. 1992), holding disapproved in *Robertson* ([T]he policy behind Rule 80(d) is to relieve the trial court from having to resolve factual disputes as to the existence and terms of an alleged settlement agreement) (citation and internal quotations omitted); Lyons Enterprises, Inc. v. Custer, 814 P.2d 780, 782 (Ariz. Ct. App. 1991) (purposes of Rule 80(d) include "to relieve the court of the necessity of determining such disputes, which . . . are often more perplexing than the case itself. The time of the court should not be taken up on controversial matters of this character.") (citation and internal quotations omitted); *cf.* Hackin v. Rupp, 452 P.2d 519, 520-21 (Ariz. 1969) (stating that most jurisdictions have adopted similar rules to "prevent fraudulent claims and oral stipulations, and to prevent disputes as to the existence and terms of agreements and to relieve the court of the necessity of determining such disputes") (quoting 83 C.J.S. Stipulations § 4 (1969)) (internal quotation marks omitted); Doyle v. Doyle, No. CA-CV 07-0734, 2008 WL 4966035, at *1-5 (Ariz. Ct. App. Nov. 18, 2008) (mem.).

[56] ARIZ. FAM. LAW PROC. R. 69 (An agreement is valid if in writing or on the record, it does not have to be both); Fuller v. Fuller, No. 1 CA-CV 11-0114, 2012 WL 2499671, at *1-4 (Ariz. Ct. App. June 26, 2012) (mem.).

[57] Gecha v. Gecha, No. 1 CA-CV 11-0130, 2012 WL 1964566, at *1-5

so, implied agreements are invalid.[58] To constitute a valid writing means that the material terms of the agreement have to be in writing.[59] And, no provision requires that a petition be pending before a written agreement becomes enforceable.[60]

Notably, the Rule does not state that the agreement must be signed.[61] Thus, one may appropriately ask how a decision-maker will know if there is a valid agreement or not if it is not signed. The answer is that if there are no signatures, one must resort to other methods to prove there has been a manifestation of mutual assent to the writing.[62] Moreover, a manifestation of assent by the parties must also be in writing and based on objective evidence, not the hidden intent of the parties.[63]

The lack of a signing under Rule 69 is inconsistent with Rule 6.5(e) of the Local Rules of Practice in Maricopa County for Family Court Cases, which states:

(Ariz. Ct. App. May 31, 2012) (mem.).

[58] *Doyle,* 2008 WL 4966035, at *1-5.

[59] *Canyon Contracting Co.,* 837 P.2d at 754; Fowler v. Fowler, 2015 WL 410594, at *1-4; *Doyle*, 2008 WL 4966035, at *1-5.

[60] Ames v. Ames, 370 P.3d 115 (Ariz. Ct. App. 2016); *In re* Marriage of D'Amours, No. 1 CA-CV 15-0775 FC, 2016 WL 7209671, at *1-3 (Ariz. Ct. App. Dec. 13, 2016) (mem.).

[61] *In re Marriage of D'Amours*, 2016 WL 7209671, at *1-3; Nunez v. Porter, No. CA-SA 14-0067, 2014 WL 2159752, at *1-3 (Ariz. Ct. App. May 22, 2014) (Dec. order).

[62] Robertson v. Alling, 351 P.3d 352, 355 (Ariz. 2015); *Ames*, 370 P.3d at 115; *In re Marriage of D'Amours*, 2016 WL 7209671, at *1-3; *Canyon Contracting Co.,* 837 P.2d at 754; *Fowler*, 2015 WL 410594, at *1-4.

[63] *Ames*, 370 P.3d at 115; *Fowler*, 2015 WL 410594, at *1-4; *Nunez*, 2014 WL 2159752, at *1-3; *Doyle*, 2008 WL 4966035, at *1-5; *cf.* Donahoe v. Arpaio, 872 F.Supp.2d 900, 906 (D. Ariz. 2012).

> Any agreements reached as a result of open negotiation must be placed in writing, signed by both parties pursuant to Rule 69 of the Arizona Rules of Family Law Procedure and presented to the court for approval.

(Emphasis added). Rule 6.5(e) is technically incorrect if it is meant to read that Rule 69 requires a signed agreement because it does not. Additionally, no explanation has been provided as to the reason requiring signatures in open negotiation and not under Rule 69.

Presumably, the drafters of Rule 69 will have to consider whether to amend it to include the requirement of signatures by both parties before the "writing" becomes binding. A typical example where this becomes important is the situation where a divorcing husband and wife bullet-point the terms of a settlement agreement on a napkin while meeting at a restaurant for dinner. The terms may constitute a writing, but, if left unsigned, the agreement remains open for litigation over whether the terms are sufficient and whether there has been mutual assent. One party may have written the terms according to what they believed was the agreement, but the writing differs from what the other party intended in the agreement. Or, one party may write what they want the agreement to be regardless of the other party's desires. Additionally, in order to be valid and binding, the agreement must be sufficiently clear and complete for the court to make the findings required under A.R.S. § 25-317.[64] Without signatures and sufficient terms, the validity of the agreement may be left in serious doubt. Therefore, it is highly recommended that such agreements be signed.

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[64] *Fowler*, 2015 WL 410594, at *1-4; *see also, In re Marriage of D'Amours*, 2016 WL 7209671, at *1-3 (Terms must be "reasonably certain").

A "writing" may be an E-mail,[65] a series of writings,[66] a joint stipulation or motion submitted by both parties,[67] and it may be between lawyers.[68] Also, the use of such communications does not violate Rule 408, Arizona Rules of Evidence ("ARE"), regarding offers of compromise.[69] However, a written spreadsheet dividing accounts may not be sufficient to prevent offsets without a written manifestation of assent.[70] Moreover, a Notice of Settlement filed under Rule 70, ARFLP, is not by itself, a "writing" with sufficient terms to satisfy the requirement.[71] Also, a Notice of Settlement signed by only one attorney will not be sufficient because it raises additional questions as to mutual assent.[72] An attorney cannot bind a client to a settlement without the client's express consent.[73] An attorney does not have implied or apparent authority to settle a claim without the client's express authorization.[74] Furthermore, failure to file the settlement agreement after filing a Notice of Set-

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[65] *Robertson*, 351 P.3d 352, 355; *In re Marriage of D'Amours*, 2016 WL 7209671, at *2; Murray v. Murray, 367 P.3d 78, 81-82 (Ariz. Ct. App. 2016) ; Vasquez-Araiza v. Gurrola, No. 1 CA-CV 13-0716 FC, 2015 WL 4623329, at *1-2 (Ariz. Ct. App. Aug. 4, 2015) (mem.); *Fowler*, 2015 WL 410594, at *2; *Nunez*, 2014 WL 2159752, at *1.

[66] Hays v. Fischer, 777 P.2d 222 (Ariz. Ct. App. 1989); *Donahoe*, 872 F.Supp.2d 900, 902; *Doyle*, 2008 WL 4966035, at *3.

[67] Coleman v. Robinson, No. 1 CA-CV 11-0034, 2011 WL 6101825, at *2 (Ariz. Ct. App. Dec. 8, 2011) (mem.) (joint motion or stipulation was binding Rule 69 agreement, but was subject to modification proceeding).

[68] *Robertson*, 351 P.3d 352, 353; Canyon Contracting Co. v. Tohono-O'Odham Housing Authority, 837 P.2d 750, 753 (Ariz. Ct. App. 1992); *Hays*, 777 P.2d at 225; *Donahoe*, 872 F.Supp.2d at 911; *Vasquez-Araiza*, 2015 WL 4623329, at *2; Nunez v. Porter, No. CA-SA 14-0067, 2014 WL 2159752, at *2 (Ariz. Ct. App. May 22, 2014) (Dec. order).

[69] Murray v. Murray, 367 P.3d 78, 82 (Ariz. Ct. App. 2016).

[70] *Doyle*, 2008 WL 4966035, at *3.

[71] Lyons Enterprises, Inc. v. Custer, 814 P.2d 780, 782 (Ariz. Ct. App. 1991); *Vasquez-Araiza*, 2015 WL 4623329, at *2.

[72] *Lyons Enterprises Inc.*, 814 P.2d 780, 782; *Vasquez-Araiza*, 2015 WL 4623329, at *2; Watson v. Watson, No. 1 CA-CV 10-0094, 2011 WL 846427, at *1 (Ariz. Ct. App. Mar. 10, 2011) (mem.).

[73] United Liquor Co. v. Stephenson, 322 P.2d 886, 886 (Ariz. 1958).

[74] Garn v. Garn, 745 P.2d 604, 608-09 (Ariz. Ct. App. 1987).

tlement leaves the record without a writing or agreement.[75] Therefore, a Notice of Settlement should only confirm an otherwise valid agreement and will not bind the parties by itself.

One other question is also left unanswered regarding the content of the "writing" necessary to satisfy the requirements of Rule 69. Rule 69 does not state the substantive or procedural terms necessary to satisfy the Rule, other than by brief implication in the reference to A.R.S. § 25-317. Under that statute, the court is to consider whether an agreement is unfair, particularly with regard to a disposition of property or maintenance, and that it is reasonable as to support, custody,[76] and parenting time of children.[77] By contrast, however, Rules 67(B) and (D), ARFLP, provide that binding agreements reached in private mediation and settlement conferences must not only comply with Rule 69, but must also state that agreements are: (1) voluntary without threat or undue influence; (2) after full disclosure of all relevant facts and information; (3) intended to be final and binding;[78] (4) fair and equitable; and (5) in the best interests of the children (if applicable).[79] These additional requirements are not expressly stated in Rule 69. An obvious question arises as to why settlement agreements reached in private mediation and other settlement conferences

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[75] *Vasquez-Araiza*, 2015 WL 4623329, at *2.

[76] ARIZ. REV. STAT. ANN. § 25-401(3) (2017) (known in Arizona as "legal decision-making").

[77] ARIZ. REV. STAT. ANN. § 25-317(B)-(D) (2017).

[78] Trkula v. Trkula, No. 1 CA-CV 15-0598 FC, 2016 WL 1696603, at *1-3 (Ariz. Ct. App. Apr. 28, 2016) (mem.).

[79] ARIZ. FAM. LAW PROC. R. 67(B)(1)(a), (B)(7), (D)(5) (there is a slight difference between 67(B) and (D) in that the word "final" is used under subsections 67(B)(7) and (D), whereas it is not used in subsection (B)(1)(a). Originally, 67(B)(7) only applied to court-ordered mediation, not private mediation.) *See In re* Marriage of Morton, No. 2 CA-CV 2007-0056, 2008 WL 4615002, at *1-3 (Ariz. Ct. App. Jan. 18, 2008) (mem.). However, Rule 67 was amended so the requirements now apply to all forms of mediation.

require these additional terms to be in the writing, but settlement agreements in other settings do not. Nonetheless, the drafter of any settlement agreement would be well-advised to include the additional requirements from Rule 67 in order to ensure enforceability.

B. On the Record by a Person Authorized. Rule 69 provides that an agreement is also valid and binding if the terms of the agreement are set forth 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.[80] A proceeding or agreement is also "on the record" if it is conducted or memorialized by a court reporter in accordance with A.R.S. §§ 12-221 to 12-225 or at the time a deposition is conducted if both parties are present or represented by counsel, and the agreement is recited on the record.[81] However, there must be a clear and firm agreement. A mere request by a wife during trial testimony that she wanted spousal maintenance for at least one year in a 23-year marriage was not a waiver of a longer claim or a binding Rule 69 agreement and the trial court had discretion to award $3,500 per

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[80] Bellings v. Palma, No. 1 CA-CV 10-0822, 2011 WL 5542413, at *3 (Ariz. Ct. App. Nov. 15, 2011) (mem.) (holding agreement orally made on the record at Resolution Management Conference was binding without fairness hearing); Branigan v. Fredrickson, No. 1 CA-CV 10-0552, 2011 WL 2462717, at *5 (Ariz. Ct. App. June 21, 2011) (mem.) (holding oral Rule 69 agreement on unreimbursed medical expenses binding (citing Goodman v. Newzona Inv. Co., 421 P.2d 318, 320 (Ariz. 1966) Montano v. Guiliano, No. 1 CA-CV 10-0438, 2011 WL 2306617, at *8-9 (Ariz. Ct. App. June 2, 2011) (mem.) (holding Rule 69 agreement regarding joint custody and holiday parenting schedule binding on parties and father's judgment remanded to conform to the agreement); Watson v. Watson, No. 1 CA-CV 10-0094, 2011 WL 846427, at *4-5 (Ariz. Ct. App. Mar. 10, 2011) (mem.) (oral agreement on record at hearing); *In re* Marriage of Kalos, Nos. 1 CA-CV 07-0222, 1 CA-CV 07-0773, 2009 WL 415594, at *4 (Ariz. Ct. App. Feb. 19, 2009) (mem.) (holding oral agreement made on record at Resolution Management Conference was binding).

[81] ARIZ. FAM. LAW PROC. R. 69 COMM. CMT. (Eff. Jan. 1, 2009).

month for life.[82] Even a statement by counsel during trial stating there was a stipulation as to the visitation adjustment on a child support worksheet calculation was not enough under Rule 80(d) if not entered in the minutes.[83] Nonetheless, omission from a decree of a valid and binding settlement agreement made on the record during trial is reversible error.[84]

The Presiding Judge's Office of the Family Court in Maricopa County has issued a script to the bench for use in such cases. It recommends that the court ask the following questions:

1. Have you heard the agreement that was stated here today?
2. Did you understand the agreement?
3. Does it in fact reflect your full agreement? – or – Did it describe everything you have agreed to?
4. **Attorney Represented:** Are you voluntarily entering in that agreement today with the advice of your attorney?
   Self-Represented Litigant: Are you voluntarily entering in that agreement today without the advice of an attorney but recognizing that if you had wanted to have an attorney

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[82] Koons v. Koons, No. 1 CA-CV 08-0073, 2009 WL 179805, at *6 (Ariz. Ct. App. Jan. 27, 2009) (mem.).

[83] Hamblen v. Hamblen, 54 P.3d 371 (Ariz. Ct. App. 2002).

[84] Stephens v. Stephens, No. 1-CA-CV 14-0608 FC, 2016 WL 74938, at *5 (Ariz. Ct. App. Jan. 7, 2016) (mem.) (failing to make any findings or set forth terms of written agreement regarding property and debts in decree); Quinn v. Fitzpatrick-Quinn, No. 1 CA-CV 11-0241, 2012 WL 1861406, at *7 (Ariz. Ct. App. May 22, 2012) (mem.) (holding decree failed to include agreement giving wife $132,000 of husband's bonuses); *Montano*, 2011 WL 2306617, at *6-7; Allan v. Allan, No. 1 CA-CV 09-0556, 2010 WL 5030874, at *5 (Ariz. Ct. App. Nov. 12, 2010) (mem.) (holding trial court failed to determine community interest in pension).

represent you here today, you could have hired one to do so?

5. Has anyone made you feel coerced or forced to enter into the agreement?
6. Under the circumstances, do you believe that the agreement is fair and reasonable?
7. **If the parties have children and the agreement impacts the children**: Under the circumstances, do you believe that the agreement is in the children's best interest?
8. Do you understand that if I approve the agreement, the agreement will be enforceable as a court order as of today's date?

In summary, the court script determines whether the parties have "heard" and "understand" the agreement, it is their "full agreement," they have "voluntarily" entered into the agreement without counsel, or it is made with the "advise" of counsel, they were not "coerced or forced," it is "fair and reasonable," it is "enforceable as of today's date," and it is in the "best interests of children" (if applicable).

There are at least two aspects of Rule 69 and the other Rules mentioned above that are omitted from the script. First, the script does not ask about full disclosure. Full disclosure is required for any binding agreements reached in private mediation and settlement conferences under Rule 67. Moreover, at least one appellate authority has found that a disclosure violation may constitute misconduct by an adverse party under Rule 60(c)(3), ARCP, the predecessor of present Rule 85(C)(1)(c), ARFLP.[85] Under Rules 60(c)(3), ARCP, and 85(C)(1)(c), ARFLP, a party is allowed to reopen a judgment for fraud, misrepresentation, or other misconduct of an adverse party. Therefore, in order to ensure the validity of a settlement agreement made on the record before an authorized judicial officer, both

[85] Breitbart-Napp v. Napp, 163 P.3d 1024 (Ariz. Ct. App. 2007).

the parties and the court would be well-advised to confirm that there has been a full and complete disclosure of all relevant facts and information between the parties.

Second, the script uses the terms "fair and reasonable" to apparently confirm the terms of the agreement under A.R.S. § 25-317, but omits the term "equitable" regarding a division of community, joint tenancy and other property held in common under A.R.S. § 25-318(A). In actuality, the conflict arises from the difference in language between the two statutes. A.R.S. §§ 25-317(B), (C) and (D) use the term "fair" regarding a disposition of property, while A.R.S. § 25-318(A) and Rule 67 use the term "equitable." Standard usage among practitioners is to use the terms together and confirm that an agreement is both "fair and equitable" regarding a disposition of property and debts to comply with both statutes. Similarly, a recitation of both criteria might be suggested regarding an oral agreement set forth on the record.

Some litigation has involved the question of the appropriate "person authorized" to receive the agreement on the record. In *Reeder* (now depublished),[86] a private mediator, although a judge pro tempore, but not assigned to that particular case, was not authorized to accept the agreement. But in *Johns*,[87] a special master, having been appointed by the court, was authorized to accept the settlement agreement. In making agreements before a judge pro tempore, it is recommended that the parties request that the judge pro tempore be officially appointed to the case for that purpose. The parties' agreement, without court appointment, is not sufficient according to *Reeder*. In other words, even though Rule 69(A)(2), as amended, allows a judge pro tempore to receive the terms of the agree-

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[86] *Supra* note 4.

[87] Johns v. Johns, No. 1 CA-CV 09-0524, 2010 WL 2889557, at *1-4 (Ariz. Ct. App. July 22, 2010) (mem.).

ment, it is best to have the judge pro tempore actually appointed for the specific case in order to avoid challenge.

C. Audio Recording. Rule 69 provides that an agreement is valid and binding if the terms of the agreement are set forth on any audio recording device before a mediator or settlement conference officer appointed by the court pursuant to Rule 67.[88] If a private mediator is used, it is best practice to request that the court confirm, approve and appoint the mediator under Rule 67.

The specific type of recording device or methods of transmission are not stated and probably should not have to be stated in the main text of Rule 69. However, the Committee Comment to Rule 69 notes that A.R.S. § 38-424 currently authorizes the use of "tape recorders or other recording devices in lieu of reporters or stenographers."[89] Current practice in Maricopa County generally requires a court-appointed mediator to submit the recording to the Family Court where it is later officially dispensed to the court and parties, if necessary. Some mediators also send the recording directly to counsel. Either way, the audio recording constitutes a valid and binding agreement as long as the material terms of the agreement are set forth and they are sufficiently clear and complete. Presumably, the material terms that are not clear and complete are not binding on the parties and may render the entire agreement invalid.

What about audio recordings that are made between unrepresented litigants or counsel of represented litigants in private mediation and not before a Rule 67 mediator or settlement conference officer appointed by the court? Technically, they do not comply with Rule 69. To make them valid and

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[88] Katz v. Siverling, No. 1 CA-CV 08-0235, 2009 WL 1311066, at *1-4 (Ariz. Ct. App. May 12, 2009) (mem.).
[89] *Supra* note 5.

binding, however, one may choose to transcribe the recording so it constitutes a "writing" under Rule 69.[90] Again, best practice is to exchange the transcription and have it signed. That is at least one way to convert an otherwise invalid audio recording into a valid and binding settlement agreement under Rule 69.

VI. PRESUMPTION/BURDEN OF PROOF/STANDARD OF PROOF

Rule 69(B) specifically states that an agreement which complies with one of the three types of agreements under subsection (A) shall be presumed to be valid and binding and the burden of proof is on the party challenging the validity of the agreement.[91] The Rule goes on to state that nothing stated in the Rule shall preclude the court from exercising its independent discretion pursuant to A.R.S. § 25-317. As stated above, the statute authorizes the court to review the agreement to determine whether it is "fair" and "reasonable." However, appellate case law under the statute, rendered prior to adoption of Rule 69, holds that it is the burden of the party asserting the validity of a separation agreement to prove by clear and convincing evidence that it is fair and equitable.[92] In other words,

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[90] Gadhok v. Nangia, No. 1 CA-CV 11-0589, 2012 WL 2154194, at *1-4 (Ariz. Ct. App. June 14, 2012) (mem.); *In re* Marriage of Morton, No. 2 CA-CV 2007-0056, 2008 WL 4615002, at *1-3 (Ariz. Ct. App. Jan. 18, 2008) (mem.) (recorded agreement in private mediation was binding and not unfair when reduced to writing in a mediation memorandum).

[91] Montano v. Guiliano, No. 1 CA-CV 10-0438, 2011 WL 2306617, at *1-8 (Ariz. Ct. App. June 2, 2011) (mem.) (judgment remanded where father failed to accurately set forth agreements for joint custody and holiday schedule); Archer v. Archer, No. 1 CA-CV 08-0543, 2009 WL 1682146, at *1-3 (Ariz. Ct. App. June 16, 2009) (mem.) (Rule 69 agreement binding unless unfair); Zaccaria v. Zaccaria, No. 1 CA-CV 08-0524, 2009 WL 1097867, at *1-3 (Ariz. Ct. App. Apr. 23, 2009) (mem.) (ADR agreement on dependency exemption binding on trial court and not against public policy under Guidelines).

[92] Sharp v. Sharp, 877 P.2d 304 (Ariz. Ct. App. 1994) (relying on *In re* Har-

there presently appears to be a conflict between Rule 69 and the prior case law under A.R.S. § 25-317 regarding the burden of proof to be applied. Rule 69 states the burden is on the party challenging the agreement. The *Sharp*[93] case under A.R.S. § 25-317, on the other hand, states the burden is on the party asserting the validity of the agreement.

Moreover, Rule 69 does not state the standard of proof to be applied. In the absence thereof, it is presumed to be a preponderance of the evidence.[94] By contrast, however, *Sharp* states that the standard to be met by the person asserting the validity of the agreement is "clear and convincing evidence."[95] And, at least one court has held that the moving party in family law matters must prove "extraordinary circumstances" to qualify for relief from a property settlement agreement.[96] A resolution regarding the presumptions of validity, burdens of proof, and standards of proof is yet to be determined and depends, at present, upon the specific facts and skill of the advocate before the trial court in each individual case.

One possible reason for the difference in the presumptions, burden of proof, and standard of proof under Rule 69, as opposed to A.R.S. § 25-317, is that the Rule applies to "all family law cases," whereas the statute applies only to "separa-

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bor's Estate, 449 P.2d 7, 16 (1969)); *cf.* Emmons v. Superior Court in and for Maricopa County, 968 P.2d 582, 586 (Ariz. Ct. App. 1998) (defense of mutual mistake to settlement agreement must be shown by clear and convincing evidence).

[93] *Sharp*, 877 P.2d at 304.

[94] Hawkins v. Allstate Ins. Co., 733 P.2d 1073, 1087 (Ariz. 1987) (proof by a preponderance of the evidence is the traditional measure of proof for most civil cases) (citing Schwalbach v. Jones, 232 P. 558 (Ariz. 1925) and Edward W. Cleary, McCormick on Evidence, Third Edition § 339 (Edward W. Cleary ed., West Publishing 1984)).

[95] *Sharp*, 877 P.2d at 309.

[96] Fuller v. Fuller, No. 1 CA-CV 11-0114, 2012 WL 2499671, at *1-4 (Ariz. Ct. App. June 26, 2012) (mem.) (citing DeGryse v. DeGryse, 661 P.2d 185 (Ariz. 1983)); *see also*, ARIZ. REV. STAT. ANN. § 25-317(F) (2017).

tion agreements." In other words, the Rule extends to all cases under Title 25, while the statute applies only to pre-decree separation agreements. However, such a distinction makes little practical sense and may lead to significant confusion in future factual settings. Separation agreements are actually a subcategory of one of the many types of settlement agreements. The only difference is the timing of the agreement, one being before the divorce and the others being at any time in the family court proceedings. But, the mere timing of the agreement should not alter such important legal concepts as presumptions, burdens of proof and standards of proof. There is no logical or legal justification for treating pre-decree settlement agreements any differently than post-decree settlement agreements, parenting plans, paternity agreements,[97] third-party caregiver agreements, spousal maintenance agreements, child support agreements or any other family law agreements, particularly where many of the same issues remain before the court and are subject to modification for many years even after a decree is entered. Thus, confusion is created because both the Rule, which is comprehensive, and the statute, which is specific, may apply to the same settlement agreement where different standards may be applied.

The procedural timing and methods for enforcing or challenging a settlement agreement are also not expressly stated in Rule 69. Presumably, a party may file a motion to enforce an agreement directly under A.R.S. § 25-317 or Rule 69.[98] Similarly, a party may choose to file a motion challenging the agreement under Rule 69(B). In at least one instance a party has used a motion for summary judgment to challenge a settlement agreement. However, the appellate court lacked jurisdiction to consider the ruling after a final judgment had been

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[97] Jackson v. Herrera, No. 1 CA-CV 08-0049, 2009 WL 104661, at *1-2 (Ariz. Ct. App. Jan. 15, 2009) (mem.).
[98] *Burton*, 2009 WL 1066000, at *1-2.

entered.[99] Additionally, one may choose to set aside the agreement under one of the appropriate subdivisions of Rule 85(C), ARFLP.[100] Under that Rule, "the motion shall be filed within a reasonable time," and for subsections "(1)(a), (b) and (c), not more than six months after the judgment or order was entered or proceeding was taken." It should be noted that a "reasonable" time, for purposes of Rule 85(C), as well as its predecessor, Rule 60(c), ARCP, is *not automatically* extended the full six months.[101] Thus, timely filing is critical![102] Moreover, a party may not challenge an agreement under Rule 85 based on information that could have been communicated to the court before the decree was signed (e.g. intimidation, domestic abuse).[103] Therefore, a person challenging the agreement, under any of the procedures stated above, would be well-advised to do so as quickly as possible after that determination has been made. Otherwise, the party enforcing the agreement may raise the defense of untimeliness.

VII. RIGHT OF OBJECTION/RESCISSION

The subject of challenging a Rule 69 agreement raises collateral questions regarding the appropriateness of a right of objection or rescission with regard to family law settlement agreements. In other words, should the Rule or the law allow parties to lawfully object to or rescind their agreements within

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[99] Bulos-Simpkins v. Simpkins, No. 1 CA-CV 13-0124, 2014 WL 1266381, at *1-7 (Ariz. Ct. App. Mar. 27, 2014) (mem.).
[100] Ghosoph v. Kottman, No. 1 CA-CV 14-0356 FC, 2015 WL 3537142, at *1-2 (Ariz. Ct. App. June 2, 2015) (mem.).
[101] United Imps. & Exports v. Superior Court, 653 P.2d 691, 693 (Ariz. 1982); Richas v. Superior Court, 652 P.2d 1035, 1037-38 (Ariz. 1982); Martin v. Martin, 893 P.2d 11, 16 (Ariz. Ct. App. 1994); Brooks v. Consol. Freightways Corp., 839 P.2d 1111, 1116 (Ariz. Ct. App. 1992); Goglia v. Bodnar, 749 P.2d 921, 923, 929 (Ariz. Ct. App. 1987).
[102] Campbell v. Frazer Constr. Co., 459 P.2d 300, 301 (Ariz. 1969).
[103] Craig v. Superior Court, 687 P.2d 395, 397 (Ariz. Ct. App. 1984); Fuller v. Fuller, No. 1 CA-CV 11-0114, 2012 WL 2499671, at *1-4 (Ariz. Ct. App. June 26, 2012) (mem.).

a stated time? While there are many advantages and disadvantages, which can be hotly debated regarding this subject, it is not an unfair question.

Other areas of the law allow a right of objection and/or rescission to certain agreements. For example, even in the family law area, Rule 68(B)(6)(b), ARFLP, provides that agreements reached in mediation by conciliation services are subject to a 30-day Notice of Objection, after which "there is no agreement in the matter." Nevertheless, subsection (c) of the same Rule allows the court to retain final authority to "accept, modify or reject or set further hearing on the agreement." Similarly, prior to December 31, 2015, a parenting coordinator's report and recommendations were subject to objection within 10 days after the date of the court order approving, modifying or rejecting them.[104] In the non-family law area, agreements regarding foreclosure consulting contracts,[105] dating referral services,[106] consumer credit transactions under the Truth-in-Lending Act,[107] and home solicitation sales[108] are subject to a three-day right of rescission or cancellation.

There is good cause for the law to consider a right of revocation or rescission, or at a minimum a definite period of objection, with regard to family law settlement agreements under Rule 69, at least in areas not involving prior judicial approval. Family law settlement agreements are unique. Public policy recognizes this in A.R.S. § 25-317 where the court is

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[104] ARIZ. FAM. LAW PROC. R. 74(I)-(J); ARIZ. FAM. LAW PROC. FORM 10; Note, Rule 74 has been amended, effective January 1, 2016, eliminating the automatic right of objection, except with regard to actions exceeding the scope of the parenting coordinator's authority. An objection must be filed within 20 days. Otherwise, the parenting coordinator's decision is binding.
[105] ARIZ. REV. STAT. ANN. § 44-1378.04 (2010).
[106] ARIZ. REV. STAT. ANN. § 44-7153 (2010).
[107] 15 U.S.C. § 1635 (2011).
[108] ARIZ. REV. STAT. ANN. § 44-5002 (2010).

expressly mandated with the task of finding that separation agreements are not unfair and reasonable. The public policy is also recognized in Rule 69(B) where it is provided that challenges may be made to settlement agreements.

While general contract principles and the right to make binding agreements are recognized as significant in Arizona,[109] so, too, are the unique circumstances regarding agreements between spouses, former spouses, and other parties in family law matters. Due to the nature of the relationships that have transpired, not all negotiations may be at arm's length. Arizona law expressly states there is a fiduciary relationship between spouses.[110] Moreover, marriages and other family and similar relationships allow for the disclosure of very personal and sensitive information that may well be appropriate during the relationship, but become lethal weapons when the relationship fails and legal proceedings ensue. Personal relationships may involve extremely delicate revelations, personal intimacies, sex, weaknesses, frailties, sensitivities, soft-spots, and hot-buttons which would never be known in arms-length business contract negotiations. One would have to be blind or naïve to believe that these would not be at the very heart of many settlement negotiations. Even the dynamics of the way in which the parties communicated or problem-solved during the relationship, or the level of control, anger, dominion, or even domestic violence, are likely to play a part in settlement negotiations. In other words, family law settlement agreements do not conveniently fit into the strict contract principles applied in other contexts. Therefore, while there must be some observance of traditional contract principles in order to ensure finality with re-

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[109] Schrey v. Allison Steel Mfg. Co., 255 P.2d 604, 607 (Ariz. 1953) (right to contract is entitled to constitutional protection, but is a qualified right); Verma v. Stuhr, 221 P.3d 23, 24, 31 (Ariz. Ct. App. 2009); Samaritan Health Sys. v. Superior Court, 981 P.2d 584, 593 (Ariz. Ct. App. 1998).

[110] Austin v. Austin, 348 P.3d 897, fn. 4 (Ariz. Ct. App. 2015) (citing *In re* Harbor's Estate, 449 P.2d 7, 16 (1969) and Gerow v. Covill, 960 P.2d 55, 64 (Ariz. Ct. App. 1998)).

gard to litigation in the family law arena, there must similarly be a recognition and realization that family law agreements are subject to exceptional and unique circumstances.

VIII. DEFECT

Rule 69(B) provides that a party challenging the validity of a family law settlement agreement must prove "any defect in the agreement." The term "defect" is not defined. Thus, the meaning of the term is completely left open for interpretation. Moreover, the term "defect" with regard to contractual agreements is probably a poor choice of words. In the tort area, the term "defect" is often used in products liability litigation with regard to the design and manufacture of defective products. Defects may not only occur in the product itself, but also in the language associated with the product in instruction manuals, labels, warnings, and other printed material. But the term "defect" is not traditionally used with written contracts. As a result, the term is not only not defined, but is unfortunate in the family law area because there is little or no authority from which to gain guidance. Therefore, the meaning of the term is left to the advocacy and skill of the litigants in each situation.

One would assume that the term "defect" includes typical contract defenses.[111] In other words, illegality, incapacity, misrepresentation/fraud,[112] mistake,[113] duress,[114] undue influ-

[111] *Id.* at 902; Zaccaria v. Zaccaria, No. 1 CA-CV 08-0524, 2009 WL 1097867, at *1-3 (Ariz. Ct. App. Apr. 23, 2009) (mem.).

[112] Trkula v. Trkula, No. 1 CA-CV 15-0598 FC, 2016 WL 1696603, at *2 (Ariz. Ct. App. Apr. 28, 2016) (mem.) (lack of fraud or mistake rendered agreement binding); Bulos-Simpkins v. Simpkins, No. 1 CA-CV 13-0124, 2014 WL 1266381, at *1-7 (Ariz. Ct. App. Mar. 27, 2014) (mem.) (trial court's finding that wife materially misrepresented value of certain assets upheld with remand for additional findings on other issues); *In re* Marriage of Kalos, Nos. 1 CA-CV 07-0222, 1 CA-CV 07-0773, 2009 WL 415594, at *1-4 (Ariz. Ct. App. Feb. 19, 2009) (mem.).

[113] Connelly v. Connelly, No. 1 CA-CV 15-0290 FC, 2016 WL 7156437, at

ence,[115] unconscionability, impossibility, impracticability,[116] ambiguity,[117] lack of mutual assent,[118] etc., would undoubtedly be considered as valid bases for setting aside a settlement agreement.[119] Some of these defenses, as well as others, are recognized as grounds for setting aside a judgment or an order based on a Rule 69 agreement under Rule 85(C), ARFLP.[120] Also, a disclosure violation, as misconduct of an adverse party,[121] or fraud upon the court,[122] may be a valid defense to an agreement. Defects might also include the omission of a relevant asset or debt,[123] the miscalculation of child support,[124] an

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*1-4 (Ariz. Ct. App. Dec. 8, 2016) (mem.) (mutual mistake, not unilateral mistake, may be a defense); Emmons v. Superior Court in and for Maricopa County, 968 P.2d 582, 586 (Ariz. Ct. App. 1998).

[114] *In re* Marriage of Gallagher, No. 1 CA-CV 07-0250, 2008 WL 4149665, at *1-3 (Ariz. Ct. App. Jan. 10, 2008) (mem.) (wife claimed duress by mediator and her own counsel).

[115] *Trkula*, 2016 WL 1696603, at *1-3

[116] Archer v. Archer, No. 1 CA-CV 08-0543, 2009 WL 1682146, at *2 (Ariz. Ct. App. June 16, 2009) (mem.).

[117] *In re* Marriage of Morton, No. 2 CA-CV 2007-0056, 2008 WL 4615002, at *1-3 (Ariz. Ct. App. Jan. 18, 2008) (mem.) (ambiguity would not be addressed on appeal without transcript).

[118] *Connelly*, 2016 WL 7156437, at *1-4.

[119] Breitbart-Napp v. Napp, 163 P.3d 1024, 1031 (Ariz. Ct. App. 2007).

[120] *In re* Jones, No. 1 CA-CV 15-0803 FC, 2016 WL 6871408, at *3 (Ariz. Ct. App. Nov. 22, 2016) (mem.); Fuller v. Fuller, No. 1 CA-CV 11-0114, 2012 WL 2499671, at *1-4 (Ariz. Ct. App. June 26, 2012) (mem.).

[121] *Fuller*, 2012 WL 2499671, at *1-4 .

[122] McNeil v. Hoskyns, 377 P.3d 46, 48-50 (Ariz. Ct. App. 2014) (non-modifiable and non-terminable agreement regarding spousal maintenance properly set aside where wife failed to disclose in open court over-payments of $85,000).

[123] Stephens v. Stephens, No. 1-CA-CV 14-0608 FC, 2016 WL 74938, at *3 (Ariz. Ct. App. Jan. 7, 2016) (mem.) (trial court omitted agreed-upon assets and debts in decree); Quinn v. Fitzpatrick-Quinn, No. 1 CA-CV 11-0241, 2012 WL 1861406, at *1, *3 (Ariz. Ct. App. May 22, 2012) (mem.) (husband omitted from decree agreement to pay wife $132,000 in bonuses); Allan v. Allan, No. 1 CA-CV 09-0556, 2010 WL 5030874, at *1, *5 (Ariz. Ct. App. Nov. 12, 2010) (mem.).

[124] Coleman v. Robinson, No. 1 CA-CV 11-0034, 2011 WL 6101825, at *1-

inconsistency between the decree and property settlement agreement[125] or other document filed with the decree,[126] omitted or inaccurate findings or agreements requisite to entry of any order,[127] improprieties in the signing, notarization or other procedural aspects of the documents, failure to timely file the settlement agreement,[128] inclusion of an unenforceable penalty,[129] etc. Another defect found in an agreement is the improper attempt to confer subject matter jurisdiction on the court.[130]

Yet another defense to a Rule 69 agreement may relate to attorneys' fees. "[A] client may, without the consent of his [counsel], settle and compromise with [the] adversary all matters in litigation in such manner and upon such terms as he may

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5 (Ariz. Ct. App. Dec. 8, 2011) (mem.).

[125] *In re* Marriage of Kalos, Nos. 1 CA-CV 07-0222, 1 CA-CV 07-0773, 2009 WL 415594, at *1-4 (Ariz. Ct. App. Feb. 19, 2009) (mem.) (agreement on record different from Rule 69 agreement); Berg-Thaemert v. Thaemert, No. 1 CA-CV 06-0767, 2007 WL 5462303, at *6 (Ariz. Ct. App. Oct. 23, 2007) (mem.) (valid Rule 69 agreement regarding personal property upheld where wife failed to identify the specified property that made the division inequitable).

[126] *In re* Marriage of Gallagher, No. 1 CA-CV 07-0250, 2008 WL 4149665, at *2-3 (Ariz. Ct. App. Jan. 10, 2008) (mem.) (decree, even if arguably fair, must not add to or vary terms of settlement agreement).

[127] Gadhok v. Nangia, No. 1 CA-CV 11-0589, 2012 WL 2154194, at *1 (Ariz. Ct. App. June 14, 2012) (mem.) (although parties agreed house was worth $1.2 million, they did not agree either party had to purchase it at that price); Armor Works Enterprises, LLC v. Cavanagh Law Firm, P.A., No. 1 CA-CV 11-0201, 2012 WL 952348, at *1-7 (Ariz. Ct. App. Mar. 20, 2012) (mem.).

[128] Vasquez-Araiza v. Gurrola, No. 1 CA-CV 13-0716 FC, 2015 WL 4623329, at *2 (Ariz. Ct. App. Aug. 4, 2015) (mem.); *ArmorWorks*, 2012 WL 952348, at *1-7 .

[129] Wehrung v. Kellam, No. 1 CA-CV 09-0014, 2010 WL 845391, at *2 (Ariz. Ct. App. Mar. 11, 2010) (mem.).

[130] Barnes v. Fink, No. 2 CA-CV 2015-0062, 2015 WL 6549582, at *1, *3 (Ariz. Ct. App. Oct. 29, 2015) (mem.) (parties to an action cannot stipulate to UCCJEA jurisdiction which court does not otherwise have).

deem necessary for the protection of his interests."[131] "Such a settlement must, however, be made in good faith, and without a purpose to defeat an attorneys' lien."[132] In such cases, "the court will protect the attorney of a party to an action against a collusive settlement of the litigation in fraud of his lien."[133] It is also noteworthy that the lien must be perfected in order to make this claim.[134]

Similarly, statutory defenses may be valid grounds for challenging a settlement agreement. These include that the agreement is "unfair" or "unreasonable" under A.R.S. § 25-317[135] or inequitable under § 25-318(A). Again, however, these sections' terms of "unfair," "unreasonable," and "equitably," like "defect," are similarly not defined.

In addition, a valid Rule 69 agreement does not preclude its modification, even if a substantial and continuing change of circumstances under A.R.S. § 25-327(A) occurs before the final decree is actually entered.[136] As a result, one

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[131] Millsap v. Sparks, 188 P. 135, 136 (Ariz. 1920); Siner v. Stewart, 449 P.2d 635, 636 (Ariz. Ct. App. 1969) (quoting *Millsap* at 136).
[132] *Millsap*, 188 P. at 136.
[133] *Id.*
[134] *See id.* ("As a general rule, [an attorney's judgment] lien is not perfected until notice has been given to the obligor against whom it is asserted . . .."); *see also* Burk v. Teufel, No. 1 CA-CV 11-0317, 2012 WL 2798622, at *1 (Ariz. Ct. App. Jul 3, 2012) (mem.) (affirming the superior court's rejection of a lien that had not attached).
[135] *Vasquez-Araiza*, 2015 WL 4623329, at *2 (citing ARIZ. REV. STAT. ANN. § 25-317 (2017)); *see also* Wehrung v. Kellam, No. 1 CA-CV 09-0014, 2010 WL 845391, at *1 (Ariz. Ct. App. Mar. 11, 2010) (mem.) (citing ARIZ. REV. STAT. ANN. § 25-317 (2017)); Archer v. Archer, No. 1 CA-CV 08-0543, 2009 WL 1682146, at *2-3 (Ariz. Ct. App. June 16, 2009) (mem.); *see also* Jackson v. Herrera, No. 1 CA-CV 08-0049, 2009 WL 104661, at *1 (Ariz. Ct. App. Jan. 15, 2009) (mem.) (applying equitable factors in reviewing parenting agreement terms); *In re* Marriage of Gallagher, No. 1 CA-CV 07-0250, 2008 WL 4149665, at *1 (Ariz. Ct. App. Jan. 10, 2008) (mem.).
[136] Huston v. Sloan, No. 1 CA-CV 11-0583, 2012 WL 2003495, at *2-3 (Ariz. Ct. App. June 5, 2012) (mem.) (affirming the family court's modifi-

should be careful to consider whether a court would characterize a Rule 69 agreement challenge as a modification rather than a defect.

Failure to timely object to an otherwise valid settlement agreement before entry of the decree may constitute waiver.[137] The parties may also waive an otherwise valid Rule 69 agreement memorialized on the record by conduct during an attempted pretrial reconciliation before trial and by both conduct and statements during trial.[138] Similarly, the parties may also confirm an allegedly invalid agreement by their testimony at trial.[139] However, one does not waive one's right to claim offsets and credits against a Rule 69 agreement by participating in an equal division of accounts without a clear showing of one's intent to do so.[140] Therefore, when challenging a Rule 69 settlement agreement, it becomes necessary to examine it from every angle so as to enumerate as many "defects" as possible.

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cation); Sarma v. Iyer, Nos. 1 CA-CV 10-0473, 1 CA-CV 10-0839, 2011 WL 6292212, at *3 (Ariz. Ct. App. Dec. 15, 2011) (mem.); Coleman v. Robinson, No. 1 CA-CV 11-0034, 2011 WL 6101825, at *3, *5 (Ariz. Ct. App. Dec. 8, 2011) (mem.) (reversing and remanding superior court's denial of modification petition).

[137] Trkula v. Trkula, No. 1 CA-CV 15-0598 FC, 2016 WL 1696603, at *1-3 (Ariz. Ct. App. Apr. 28, 2016) (mem.).

[138] Watson v. Watson, No. 1 CA-CV 10-0094, 2011 WL 846427, at *3 (Ariz. Ct. App. Mar. 10, 2011) (mem.) (affirming family court's finding of waiver).

[139] *In re* Marriage of Morton, No. 2 CA-CV 2007-0056, 2008 WL 4615002, at *1-2 (Ariz. Ct. App. Jan. 18, 2008) (mem.) (husband confirmed settlement agreement at trial despite private mediator's alleged lack of authority to write mediation memorandum).

[140] Doyle v. Doyle, No. CA-CV 07-0734, 2008 WL 4966035, at *4-5 (Ariz. Ct. App. Nov. 18, 2008) (mem.).

IX. INDEPENDENT DISCRETION UNDER A.R.S. § 25-317

Rule 69(B) further provides that in reviewing a separation agreement, nothing shall preclude the court from exercising its independent discretion under A.R.S. § 25-317. The Rule makes no reference to the specific subsection of the statute. It is clear that A.R.S. § 25-317 subsection (B) provides the agreement is binding on the court unless it finds the agreement unfair, after considering the parties' economic circumstances and any other relevant evidence. Subsection (C) of the statute further provides that if the court deems the separation agreement unfair as to disposition of property or maintenance, the court may request that the parties submit a revised separation agreement or may make orders for the disposition of property or maintenance. Finally, subsection (D) states that if the court finds that the separation agreement is not unfair as to disposition of property or maintenance and that it is reasonable as to support, custody, and parenting time of children, the separation agreement shall be either set forth or incorporated by reference in the decree. The parties shall be ordered to comply with the agreement's terms. If, on the other hand, the separation agreement provides that its terms shall not be set forth in the decree, the decree shall identify the separation agreement as incorporated by reference and state that the court has found the terms as to property disposition and maintenance not unfair and the terms as to support, custody, and parenting time of children reasonable.

Thus, in summary, at least with regard to a separation agreement, A.R.S. § 25-317 requires the court find that the separation agreement is not unfair as to property and maintenance and is reasonable as to support, custody, and parenting time of children. Lacking such a finding, the separation agreement would not be binding on the court. In that event, the court may request that the parties submit a revised separation agreement or make other orders for the disposition of property, maintenance, support, legal decision-making and parenting

time as deemed necessary.

A trial court has the power to approve and adopt the agreement, reject it entirely, or modify it as the facts and circumstances warrant.[141] To do so, the court may elect not to

[141] ARIZ. SUPER. CT. MARICOPA CO. R. 6.5(e); Murray v. Murray, 367 P.3d 78, 80 (Ariz. Ct. App. 2016). (trial court on remand to take evidence and make findings on best interests of children in relocation case); Wick v. Wick, 489 P.2d 19, 21-22 (Ariz. 1971); *In re* Harbor's Estate, 449 P.2d 7, 16 (1969); *In re* Estate of Henry, 430 P.2d 937, 940 (Ariz. Ct. App. 1967); Breitbart-Napp v. Napp, 163 P.3d 1024, 1032 (Ariz. Ct. App. 2007); *see also* Vasquez-Araiza v. Gurrola, No. 1 CA-CV 13-0716 FC, 2015 WL 4623329, at *2 (Ariz. Ct. App. Aug. 4, 2015) (mem.) (court could find E-mail agreement and Notice of Settlement not binding and unfair where agreement not filed as ordered); Johnston v. Johnston, No. 1 CA-CV 14-0451 FC, 2015 WL 4372813, at *2 (Ariz. Ct. App. July 16, 2015) (mem.) (trial court did not abuse its discretion in accepting husband's Rule 69 property settlement agreement after mediation where wife's failure to conduct adequate discovery did not constitute fraud or excusable neglect); Chandler v. Ellington, No. 1 CA-CV 13-0648 FC, 2015 WL 3819094, at *1-2 (Ariz. Ct. App. June 18, 2015) (mem.) (trial court did not abuse its discretion in adopting best interest attorney recommendation that mother have final legal decision-making authority despite parties' Rule 69 agreement otherwise); Ghosoph v. Kottman, No. 1 CA-CV 14-0356 FC, 2015 WL 3537142, at *1-2 (Ariz. Ct. App. June 2, 2015) (mem.) (trial court did not abuse its discretion in denying motion to enforce property settlement agreement without necessary newly discovered evidence); Ledo v. Ledo, No. 1 CA-CV 14-0331 FC, 2015 WL 2383843, at *1 (Ariz. Ct. App. May 7, 2015) (mem.) (trial court did not err in agreeing with Special Master's recommendation that husband not receive any further credits from home proceeds divided under Rule 69 agreement); Fowler v. Fowler, 2015 WL 410594, at *2 (absent a trial, affirming family court's entry of a voluntary modification); Bulos-Simpkins v. Simpkins, No. 1 CA-CV 13-0124, 2014 WL 1266381, at *1, *5 (Ariz. Ct. App. Mar. 27, 2014) (mem.) (trial court not bound to divide assets as agreed where wife had materially misrepresented values); Gadhok v. Nangia, No. 1 CA-CV 11-0589, 2012 WL 2154194, at *2-4 (Ariz. Ct. App. June 14, 2012) (mem.) (court not bound to accept transcribed settlement agreement regarding value of residence when it decreased in value and there was no agreement required either party had to purchase it at the higher price); *Burton*, 2009 WL 1066000, at *2-4 (court not bound to accept settlement agreement and properly appointed real estate

hold a hearing[142] or hold a hearing as it deems fit.[143] A hearing would be required in at least several scenarios, such as when prior emails between counsel suggested that the parties assented to the agreement's material terms,[144] when the court finds evidence of undue influence, duress and illegality before a decree and property settlement agreement were entered,[145] and to determine fairness in a valid settlement agreement.[146] Proceedings are further required when a disclosure violation is discovered after negotiating a settlement agreement[147] and when a

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commissioner to sell residence where difference between agreed value and actual value prevented husband from completing refinance of property).

[142] Robertson v. Alling, 351 P.3d 352, 355 (Ariz. 2015); Sharp v. Sharp, 877 P.2d 304 (Ariz. Ct. App. 1994); *In re* Marriage of D'Amours, No. 1 CA-CV 15-0775 FC, 2016 WL 7209671, at *1-3 (Ariz. Ct. App. Dec. 13, 2016) (mem.); *Johnston*, 2015 WL 4372813, at *2; Gadhok v. Nangia, 2012 WL 2154194, at *2-4 (trial court within its discretion to deny request for post-decree hearing where wife waited two years, where wife did not allege specific assets, where no transcript was provided, and where wife had a history of making unfounded assertions); Huston v. Sloan, No. 1 CA-CV 11-0583, 2012 WL 2003495, at *1-3 (Ariz. Ct. App. June 5, 2012) (mem.).; Bellings v. Palma, No. 1 CA-CV 10-0822, 2011 WL 5542413, at *1-3 (Ariz. Ct. App. Nov. 15, 2011) (mem.) (oral agreement made at Resolution Management Conference regarding sale of residence was binding and trial court was not required to conduct a *Sharp* hearing where agreement was made in open court); Katz v. Siverling, No. 1 CA-CV 08-0235, 2009 WL 1311066, at *1-4 (Ariz. Ct. App. May 12, 2009) (mem.) (citing Herberman v. Bergstrom, 816 P.2d 244 (Ariz. 1991) (*Sharp* does not require a full evidentiary hearing; trial court can conduct limited hearing on certain issues it deems appropriate).

[143] *Robertson*, 351 P.3d at 355; *Breitbart-Napp*, 163 P.3d at 1032; *Chandler*, 2015 WL 3819094, at *1-2; *Ledo,* 2015 WL 2383843, at *1; *Bulos-Simpkins*, 2014 WL 1266381, at *1, *5; Johns v. Johns, No. 1 CA-CV 09-0524, 2010 WL 2889557, at *1-4 (Ariz. Ct. App. July 22, 2010) (mem.). (citing *Sharp*, 877 P.2d at 304).

[144] Nunez v. Porter, No. CA-SA 14-0067, 2014 WL 2159752, at *1-3 (Ariz. Ct. App. May 22, 2014) (Dec. order).

[145] *Wick*, 489 P.2d at 21-22.

[146] *Sharp*, 877 P.2d at 304; Archer v. Archer, No. 1 CA-CV 08-0543, 2009 WL 1682146, at *1-3 (Ariz. Ct. App. June 16, 2009) (mem.) (Rule 69 agreement binding except to the extent it was unfair).

[147] *Bulos-Simpkins*, 2014 WL 1266381, at *1, *5.

valid postnuptial agreement is challenged for lack of disclosure.[148] Moreover, undue influence, coercion, and duress require a *Sharp* hearing.[149]

Alternatively, there are scenarios in which a hearing would not be necessary, such as when letters between counsel with authority compromised a personal injury claim,[150] when a settlement agreement is binding because the risks of an economic downturn or lack of financing are foreseeable,[151] or when a settlement offer is not timely accepted, thus barring its admission.[152] Further, a hearing would not be required when a property settlement agreement shows no evidence of fraud or mistake,[153] when emails and spreadsheets between the parties adequately showed no consent and lacked terms sufficient to constitute an agreement,[154] and when a request to offset sole and separate property interests against community interests was not stated in the agreement and the issue was not raised at trial.[155]

As further evidence of the court's independent discretion as to settlements and related decrees, Rules 67(B) and (D)

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[148] *Breitbart-Napp*, 163 P.3d at 1024.

[149] Johns v. Johns, No. 1 CA-CV 09-0524, 2010 WL 2889557, at *1-4 (Ariz. Ct. App. July 22, 2010) (mem.).

[150] Hays v. Fischer, 777 P.2d 222 (Ariz. Ct. App. 1989).

[151] *Archer*, 2009 WL 1682146, at *1-3.

[152] *Cf.* Perry v. Ronan, 233 P.3d 617 (Ariz. Ct. App. 2010) (finding a valid contract; applying Rest. 2d of Contracts to conclude that known delays can bar acceptance, unless the acceptance falls within the permissible duration).

[153] *In re* Jones, No. 1 CA-CV 15-0803 FC, 2016 WL 6871408, at *1-3 (Ariz. Ct. App. Nov. 22, 2016) (mem.); Trkula v. Trkula, No. 1 CA-CV 15-0598 FC, 2016 WL 1696603, at *1-3 (Ariz. Ct. App. Apr. 28, 2016) (mem.); Johnston v. Johnston, No. 1 CA-CV 14-0451 FC, 2015 WL 4372813, at *1-3 (Ariz. Ct. App. July 16, 2015) (mem.).

[154] Doyle v. Doyle, No. CA-CV 07-0734, 2008 WL 4966035, at *1-5 (Ariz. Ct. App. Nov. 18, 2008) (mem.).

[155] *See* discussion *supra* note 135; Allan v. Allan, No. 1 CA-CV 09-0556, 2010 WL 5030874, at *1-5 (Ariz. Ct. App. Nov. 12, 2010) (mem.).

provide that the court may allow mediators and settlement conference officers, including pro-tem judges assigned to the case, to make the findings under A.R.S. § 25-317, and sign the decree. A decree entered under these circumstances has the same force and effect as any other decree entered by the judge or commissioner to whom the case is assigned.

Apparently, the trial court can ignore a severability clause in the agreement, which provides that if the court deems invalid any of the terms and conditions of the agreement, then the court shall limit the invalid section to the least extent possible and allow the rest of the agreement to stand. Case law and local rules do not bind the court to such a provision and the court may find that any "defect" in the agreement renders the entire agreement invalid.[156] Or, on the other hand, the court may find that the severability clause is valid and either modify or reject the offending parts.

As noted above, the term "unfair" under A.R.S. § 25-317 is also not defined.[157] Case law already indicates that it does not always mean "equal."[158] However, how far from "equal" is "fair" is left to the litigants and the court. Interestingly, § 25-317 also does not use the word "equitable" as required under A.R.S. § 25-318(A). But, case law requires that to be enforced, the agreement must not only be fair, but equitable.[159] Traditionally, the term equitable under A.R.S. § 25-

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[156] *See generally*, Rule 6.5(e) Local Rules of Practice for Maricopa County (Family Court); Wick v. Wick, 489 P.2d 19, 21-22 (Ariz. 1971); *In re* Harbor's Estate, 449 P.2d 7, 16 (1969); *In re* Estate of Henry, 430 P.2d 937, 940 (Ariz. Ct. App. 1967); Breitbart-Napp v. Napp, 163 P.3d 1024 (Ariz. Ct. App. 2007).

[157] The term "grossly unfair" was recognized in Hays v. Fischer, 777 P.2d 222 (Ariz. Ct. App. 1989 as justification for setting aside an agreement where an attorney may not be authorized by his client to compromise a lawsuit (citing Allen v. Fewel, 87 S.W.2d 142 (1935)).

[158] ARIZ. REV. STAT. ANN. § 318(A) (2017); *see also*, Toth v. Toth, 946 P.2d 900 (Ariz. 1997).

[159] *Wick,* 489 P.2d at 21-22; *In re Harbor's Estate*, 449 P.2d at 16; *Breit-*

318(A) means "substantially equal."[160] Conversely, at least two cases use the term "fair" only, and make no reference to the term "equitable."[161] It is clear that a mere recitation by the parties that the agreement is fair and equitable is not enough and the court must make its own finding regardless of the parties' statements.[162] Thus, it is best practice to articulate the reasons why the settlement agreement is both "fair" and "equitable" in the text of the document so that the court or settlement conference officer can make the requisite findings.

X. PRE-DECREE VERSUS POST-DECREE AGREEMENTS

As stated above, another legal question arises regarding agreements presented to the court under Rule 69 and those presented under A.R.S. § 25-317. Rule 69 is not limited concerning the type of "agreement" presented. The rule appears to apply to both pre- and post-decree settlement agreements, such as modification agreements, enforcement agreements, asset/debt redistribution, and all other relevant matters. However, A.R.S. § 25-317 appears to limit the court's consideration of a "separation agreement" submitted simultaneously with the decree. Even the title of the statute references only "separation" agreements. This distinction is further amplified by the fact that entry of a decree precludes modification of a decree and property settlement agreement incorporated by reference under

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bart-Napp, 163 P.3d at 1024; Sharp v. Sharp, 877 P.2d 304 (Ariz. Ct. App. 1994).

[160] Hatch v. Hatch, 547 P.2d 1044 (Ariz. 1976); *In re* Marriage of Inboden, 225 P.3d 599 (Ariz. Ct. App. 2010); Lincoln v. Lincoln, 746 P.2d 13 (Ariz. Ct. App. 1987).

[161] *In re Harbor's Estate*, 449 P.2d at 16 (finding a failure to meet the burden of showing a fair and equitable transaction); Johns v. Johns, No. 1 CA-CV 09-0524, 2010 WL 2889557, at *1-4 (Ariz. Ct. App. July 22, 2010) (mem.).

[162] *Johns*, 2010 WL 2889557, at *1-4.

A.R.S. § 25-317(F), unless the court finds that conditions have been met for reopening a judgment under Rule 85(C), A.R.F.L.P.[163]

A natural question arises as to whether the incorporation of A.R.S. § 25-317 into Rule 69 permits and/or obligates the trial court to make the same analysis as to fairness and reasonableness for all agreements and not just pre-decree separation agreements. The express language of Rule 69 suggests that the court may review all agreements under § 25-317. In other words, an agreement made after the entry of the decree is subject to the same review by the trial court for fairness and reasonableness as an agreement made at the time the decree is entered. Also, as stated previously, in family law, there is really no legal or logical reason for differentiating between pre-decree agreements and other agreements, including pre-decree, post-decree and non-dissolution matters, in the family law field.

At least one authority has cited *Sharp* (under A.R.S. § 25-317) as authority for the trial court's approval of a post-decree agreement under Rule 69 regarding the relocation of a child.[164] Another case has cited Rule 69(B) as authority for applying an "unfairness" standard to a pre-decree agreement regarding a division of assets.[165] Another has cited A.R.S. § 25-317 in support of the trial court's review of a post-decree agreement regarding extracurricular and continuing education expenses in the child support context.[166] Still another has ap-

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[163] *In re Jones*, No. 1 CA-CV 15-0803 FC, 2016 WL 6871408, at *1-3 (Ariz. Ct. App. Nov. 22, 2016) (mem.).

[164] *See generally* Fowler v. Fowler, 2015 WL 410594, at *1-4 (Ariz. Ct. App. Jan. 27, 2015) (mem.); *but see,* Zaccaria v. Zaccaria, No. 1 CA-CV 08-0524, 2009 WL 1097867, at *1-3 (Ariz. Ct. App. Apr. 23, 2009) (mem.) (holding settlement agreements are governed by general contract principles).

[165] Vasquez-Araiza v. Gurrola, No. 1 CA-CV 13-0716 FC, 2015 WL 4623329, at *1-2 (Ariz. Ct. App. Aug. 4, 2015) (mem.).

[166] Gecha v. Gecha, No. 1 CA-CV 11-0130, 2012 WL 1964566, at *1-5

plied general contract principles to uphold a post-decree agreement regarding unreimbursed medical expenses (e.g. child support).[167] This conflict raises a number of questions that are yet to be answered.

Questions remain where traditional contract principles stand in relation to pre-decree and post-decree agreements.[168] Are all family law agreements subject to court approval under Rule 69? Does that mean that all agreements, even post-decree agreements, are subject to the fairness and reasonableness requirements of A.R.S. § 25-317? In post-decree cases, are parties free to reach any agreements that are not subject to court scrutiny? After a decree, is there such a thing as a traditional binding contract between the parties that is not subject to court approval? These, and other similar questions, are subject to further direction from the legislature as well as Arizona's trial and appellate courts. But, if one acknowledges that family law agreements are unique, then a strong argument exists that all family law agreements are subject to the same court scrutiny and approval regardless of whenever made.

XI. ATTORNEYS' FEES/SANCTIONS

Rule 69 confirms the court's discretion in awarding attorneys' fees and costs under A.R.S. § 25-324 whenever a par-

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(Ariz. Ct. App. May 31, 2012) (mem.).

[167] Branigan v. Fredrickson, No. 1 CA-CV 10-0552, 2011 WL 2462717, at *1-4 (Ariz. Ct. App. June 21, 2011) (mem.).

[168] *In re* Estate of Lamparella, 109 P.3d 959 (Ariz. Ct. App. 2005); *see generally,* Harris v. Harris, 991 P.2d 262 (Ariz. Ct. App. 1999); Emmons v. Superior Court in and for Maricopa County, 968 P.2d 582, 586 (Ariz. Ct. App. 1998); *Branigan*, 2011 WL 2462717, at *1-4 (general contract principles govern post-decree settlement agreement) (citing *Emmons*, 968 P.2d at 586); *Zaccaria,* 2009 WL 1097867, at *1-3 .

ty challenges a settlement agreement's validity.[169] The statutory factors to be considered under A.R.S. § 25-324(A) are: (1) the respective financial resources of the parties; and (2) the reasonableness of their positions. The financial information must be current enough for the court to make the requisite findings under the statute.[170]

Fees can be awarded against both the challenging party and the challenging attorney.[171] The trial court has discretion on whether to award attorney's fees for the actual negotiation and for the preparation of a Rule 69 Agreement.[172] Attorney fees can be awarded, plus sanctions, for committing a fraud upon the court as part of the settlement agreement.[173] A non-controlling factor includes a mandatory contractual provision awarding fees and costs to the prevailing party.[174] Also not controlling is the prevailing party standard without contractual provision.[175] Additionally, courts have found valid and binding post-decree Rule 69 agreements regarding payments on prior awards of attorneys' fees and costs.[176] Moreover, a finding of contempt is a valid sanction for violating a Rule 69 agreement

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[169] Haak v. Haak, Nos. 1 CA-CV 13-0764 FC, 1 CA-CV 14-0183 FC, 2015 WL 1359392, at *1-4 (Ariz. Ct. App. Mar. 24, 2015) (mem.); MacLean v. Kappa, No. 1 CA-CV 13-0512, 2014 WL 2895579, at *1-3 (Ariz. Ct. App. June 24, 2014) (mem.).

[170] *MacLean*, 2014 WL 2895579, at *1-3; Breitbart-Napp v. Napp, 163 P.3d 1024, 1031 (Ariz. Ct. App. 2007).

[171] *Id.*

[172] Sharkey v. Sharkey, No. 1 CA-CV 15-0386 FC, 2016 WL 3021979, at *1-3 (Ariz. Ct. App. May 24, 2016) (mem.).

[173] McNeil v. Hoskyns, 377 P.3d 46, 48-50 (Ariz. Ct. App. 2014).

[174] Edsall v. Superior Court, 693 P.2d 895 (Ariz. 1984); *In re* Gubser, 614 P.2d 845 (Ariz. 1980); *MacLean*, 2014 WL 2895579, at *1-3; *see also*, Large v. Large, No. 1 CA-CV 11-0073, 2012 WL 1057598, at *1-5 (Ariz. App. Mar. 27, 2012) (mem.) (prevailing party attorneys' fees provision in pre-marital agreement was procedurally unconscionable, not binding, and severable despite validity of remainder of agreement).

[175] *Breitbart-Napp*, 163 P.3d at 1031; Burnette v. Bender, 908 P.2d 1086, 1091 (Ariz. Ct. App. 1995).

[176] Lewis v. Rehkow, No. 1 CA-CV 11-0091, 2012 WL 2154181, at *1-5 (Ariz. Ct. App. June 14, 2012) (mem.).

requiring attorneys' fees.[177] And, in at least one case, an alleged deviation from a Rule 69 agreement has led to a separate tort lawsuit.[178]

XII. SUMMARY

As is evident from the significant number of trial court proceedings and appellate authority, Rule 69 is used extensively in family law cases. There is much more to it than appears on the surface. There are clearly some unanswered questions that will require amendments by the drafters and/or clarifications by the courts. However, if the goal of Rule 69 is to promote settlements and help families, parents and others resolve their cases amicably, quickly and inexpensively, then a thorough and clear understanding of the Rule for all who work in this field is essential to the successful outcome of any case.

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[177] *Id.*

[178] Armor Works Enterprises, LLC v. Cavanagh Law Firm, P.A., No. 1 CA-CV 11-0201, 2012 WL 952348, at *1-7 (Ariz. Ct. App. Mar. 20, 2012) (mem.).

II.

RULE 69 OLD vs.
NEW COMPARISON CHART

RULE 69 COMPARISON CHART

PRIOR RULE (2011)	CURRENT RULE (2019)
A. An Agreement between the parties shall be valid and binding if:	**(a) Validity.** An agreement between the parties is valid and binding on the parties if:
1. the agreement is in writing , or	**1.** the agreement is in writing and **signed by the parties personally or by counsel on a party's behalf;**
2. the terms of the agreement are set forth 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,** or	**2.** the agreement's terms are stated on the record before a judge, commissioner, judge pro tempore, or court reporter; or
3. the terms of the agreement are set forth on any audio recording device before a mediator or settlement conference officer appointed by the court **pursuant to Rule 67.**	**3.** the agreement's terms are stated in an audio recording made before a mediator or a settlement conference officer appointed by the court.
	(b) Court Approval. An agreement under this rule is not binding on the court until it is submitted to and approved by the court as provided by law.
B. Any agreement entered into by the parties under this rule shall be presumed to be valid and binding, and it shall be the burden of the party challenging the validity of the agreement to prove any defect in the agreement, **except that nothing herein shall preclude the court from exercising its independent discretion pursuant to A.R.S. § 25-317.** Pursuant to A.R.S. § 25-324, the court may award a party the cost and expenses of maintaining or defending a proceeding to challenge the validity of an agreement made in accordance with this rule.	**(c) Challenge to Validity.** An agreement under section (a) is presumed valid, and a party who challenges the validity of an agreement has the burden to prove any defect in the agreement. Under A.R.S. § 25-324, the court may award a party the costs and expenses of maintaining or defending a challenge to the validity of an agreement that was made in accordance with this rule.

III.

16 RULE 69 CASES

AFTER 1/1/17

16 RULE 69 CASES AFTER 1/1/17

CASE CITE	SUMMARY
1. *In Re the Marriage of English v. Calzoncit,* 2017 WL 410843 Memo Decision (1/31/17)	Pre-Decree. Father and Mother entered into Rule 69 agreement re: legal decision-making and parenting time, which Father later denied. The trial court found that Father's original claims of coercion and manipulation were evidence of the difficulty in obtaining any meaningful agreement with Father. Father was combative and attempted to get Mother to follow his proposed schedule after he had expressly insisted on keeping to the original agreement. The trial court awarded sole legal decision-making. The Court of Appeals affirmed. Practice tip: Even if a client enters into a Rule 69 agreement on legal decision-making and parenting time, the court can find his or her actions to be contrary and award sole legal decision-making.
2. *Tauscher v. Hanshew* 2017 WL 1364864 Memo Decision (4/13/17)	Pre-Decree. On the date of trial the parties presented the family court with a hand-written agreement prepared by Father's attorney under Rule 69. The trial court accepted the agreement on the record. Father's attorney prepared a Consent Decree which Mother refused to sign. Father's attorney lodged the unsigned proposed Consent Decree with the court. Mother submitted her own proposed Consent Decree. The court signed Mother's proposed Consent Decree. Father moved to set aside the Decree. The court set a status conference. At the conference the court considered the evidence and arguments. Father submitted another proposed Decree and the court signed it, thereby implicitly over-ruling Mother's objections. The parties argued that competing burdens of proof between A.R.S. § 25-317 and Rule 69. The trial court found that Rule 69 controlled and Mother, as the party challenging the agreement, bore the burden of proof. The Court of Appeals held that the *Sharp* case did not involve a presumptively valid Rule 69 agreement because it was decided on summary judgment where the moving party bore the burden of proof. The court also rejected Mother's argument that she needed a formal evidentiary hearing because there was other evidence in the record and the court heard from the parties and their attorneys. The court also rejected Mother's arguments, contrary to the Rule 69 agreement, that Father would use his separate property to pay the HELOC debt. The court also rejected Mother's argument that

	Father's firearms were worth more than the value stated in the inventory attached to the Rule 69 agreement. The court found the Rule 69 agreement fair and reasonable. Attorney's fees were not awarded under Rule 69 because no current financial information was provided and the Court declined to award attorney's fees based upon the reasonableness of positions taken. *Practice Tip:* The court applied the Rule 69 burden of proof where an otherwise valid agreement was challenged.
3. *Hernandez v. Barrera,* 2017 WL 1506570 Memo Decision (4/27/17)	Pre-Decree. Husband alleged that Wife signed a written agreement granting him the marital residence in exchange for $20,000.00 and his payment of the community debts. Husband filed a motion to enforce Wife's handwritten agreement under Rule 69 claiming he was entitled to the marital residence after paying Wife $20,000.00 and paying the community debts. Wife denied the agreement arguing that it did not constitute a Rule 69 agreement and was not fair and equitable. The trial court concluded that, to the extent the handwritten statement constituted a Rule 69 agreement, it was not fair and equitable. The Court of Appeals held that the trial court properly rejected the Rule 69 agreement because it was not fair and equitable. In a footnote the Court of Appeals noted that Wife did not appeal the trial court's assumption that the Rule 69 agreement was valid and it was, therefore, assumed for purposes of the appeal. *Practice Tip*: Challenge the validity of the Rule 69 agreement as well as the fairness if it applies.
4. *Ian v. Whitehead in and for County of Maricopa,* 2017 WL 2125697 Memo Decision (5/16/17)	Pre-Decree. Attorney's e-mails confirmed Rule 69 agreement. Drafts forthcoming. Minute entry confirmed settlement and placed matter on inactive calendar. Dispute arose over revocable trust. The court set an evidentiary hearing but granted Husband's Motion *In Limine* to preclude introduction of the settlement-related e-mails under Rule 408 of the rules of evidence. Special Action relief granted. Court of Appeals held that Rule 408 was not a bar because the evidence and negotiations may be used to prove the existence of a Rule 69 agreement. Although the e-mails contained Rule 408 language, they were not a stipulation to waive a rule of evidence at trial. The e-mails did not outline the terms of any purported stipulation with sufficient clarity to become enforceable between the parties as a separate agreement. Also, promissory estoppel was not a bar because a party cannot unilaterally change the rules of evidence applicable to a

	proceeding simply by attaching broad cautionary language to a settlement offer. Allowing enforcement of the boilerplate disclaimer language under a promissory estoppel theory would subvert the policy behind Rule 69's requirement that agreements be made in writing. *Practice Tip*: E-mails are evidence of an agreement, but they have to be clear on the terms.
5. *Coburn v. Rhodig*, 243 Ariz. 24, 400 P.3d 448 (App. 2017) Memo Decision	Post-Decree Petition by Wife to enforce spousal maintenance arrearages. Husband did not request modification of the Decree, but rather asserted the parties' subsequent written agreement, in which Wife adjusted the amount owed, established the equitable defenses of waiver, estoppel and laches. The trial court concluded it lacked jurisdiction to consider the agreement because neither party requested modification. Spousal maintenance in the Decree was non-modifiable. A subsequent agreement provided that Husband would pay a lump-sum plus monthly payments for 12 months and Wife agreed to waive any other unpaid support. Wife alleged she signed the post-decree agreement under duress and Husband alleged the equitable defenses of waiver, estoppel and laches to Wife's arrearage claim. Wife also argued that the Consent Decree made the spousal maintenance non-modifiable, and despite the written agreement, the trial court lacked jurisdiction to modify the Decree. The trial court entered judgment of $136,000.00 plus $37,259.39 in interest. Husband argued the written post-decree agreement was enforceable under Rule 69 and superseded or waived the terms of the non-modifiable spousal maintenance in the Consent Decree. The Court of Appeals held that the contested issue of Wife's duress required an evidentiary hearing to determine the validity of the Rule 69 agreement. *Practice Tip:* Some defects or defenses to a Rule 69 agreement require evidence.
6. *Ingram v. Hernandez*, 2017 WL 4173617 Memo Decision (9/21/17)	Post-Decree modification re: legal decision-making and parenting time. Decree awarded Mother sole legal decision-making and ordered Father to complete a batterer's intervention program before parenting time. In a post-decree settlement conference the parties agreed to gradually increase Father's parenting time starting with supervision. The court approved the agreement and appointed an interventionist with Father to bear all of the costs. A year-and-a-half later Father filed a motion seeking to modify the Rule 69 agreement based on his move to Idaho. The trial court denied Father's motion to modify the Rule 69

	agreement and the Court of Appeals affirmed. Because modifications of parenting time are always permitted based on the best interests of the child, the court reviewed for an abuse of discretion. The requirement for supervised parenting time was not contingent on where Father lived. *Practice Tip:* You can't make an end-run around a Rule 69 agreement by moving.
7. *Camargo v. Camargo,* 2017 WL 4247767 Memo Decision (9/26/17)	Pre-Decree. On the first day of trial the Superior Court confirmed a Rule 69 agreement to sell a residence and divide the proceeds, with a formal written order to be submitted thereafter. No additional agreements were documented by the parties. After the trial, the trial court entered orders based on the Rule 69 agreement regarding the residence, and also added purported agreements concerning other community property based on pre-trial statement negotiations that the parties never finalized. The Court of Appeals vacated the Decree's apportionment of community property other than the residence and remanded for apportionment on a fair and equitable basis supported by reasonable evidence. *Practice Tip:* The Rule 69 agreement should always be fair and equitable.
8. *In Re Marriage of Stone v. Stone,* 2017 WL 4288033 Memo Decision (9/28/17)	Pre-Decree. Three-year marriage with no children. At mediation the parties signed a written agreement under Rule 69. The agreement awarded Wife all of the assets and liabilities associated with a bar and grill restaurant and directed her to make an equalization payment of $85,000.00 to Husband "in lieu of spousal maintenance." Four days later the Wife challenged the agreement on duress. Husband filed a counter-motion to adopt the agreement. The court held a status conference, but did not allow Wife to admit documentary evidence and yet considered Husband's unsworn testimony about waste. The trial court denied Wife's motion and granted Husband's counter-motion, found the agreement to be fair and equitable, and awarded Husband attorney's fees of $2,050.00. The Court of Appeals vacated and remanded the portions of the Decree relating to the bar and grill. Under A.R.S. § 25-317(B), the court had a duty to independently determine whether the agreement was fair and equitable before incorporating it into the Decree and to consider all "relevant evidence produced by the parties" in doing so. The court relied heavily on *Sharp* where the Wife claimed the agreement was the result of undue influence and overbearing tactics. The court also vacated the award of

	attorney's fees. *Note:* The Court of Appeals treated the agreement as a Rule 69 agreement where the Wife bore the burden of proving a defect in the agreement. The Court of Appeals did not address the burden of proof under *Sharp* where the Husband bore the burden of proof that the agreement was fair and equitable. In sum, the Court of Appeals held that the record was devoid of competent evidence to support the award of the bar and grill to Wife and the corresponding equalization payment to Husband. *Additional Note:* The court cited *Foster* which held that the trial court in that case abused its discretion by awarding one spouse a greater share of the community property in lieu of spousal maintenance. In Footnote 6 the court also confirmed that an evidentiary hearing may not be necessary if the record has sufficient evidence from which the court can determine whether the settlement agreement is fair and equitable. *Practice Tip*: (1) an evidentiary hearing is required for defenses like duress; (2) the burden is often on the party challenging the agreement.
9. *Page v. Moore*, 2017 WL 4926799 Memo Decision (10/31/17)	Pre-Decree gray divorce. The parties entered into an agreement under Rule 69 regarding the division of personal property. After a trial on the remaining issues, the court incorporated the agreement into the Decree, and stated certain property would be awarded to Husband "if found." Husband challenged the division, but the basis was not stated. The Court of Appeals affirmed and held that Husband, as the party challenging the agreement, had the burden of proving "any defect in the agreement." The terms were binding on the court if the agreement was fair under A.R.S. § 25-317(B). Note, the court did not consider the agreement under *Sharp* where the wife bore the burden of proof regarding its fairness. *Additional Note*: Husband, *pro per*, filed a Brief without a Table of Contents, Table of Authorities and Statement of Facts. Also, his brief contained no references to the record and cited only one legal authority. Finally, he provided no transcripts. Therefore, it is no wonder that he lost! *Practice Tip*: Have an appellate lawyer do the appeal.
10. *Guare v. Marner*, 2017 WL 5664651 Memo Decision (11/24/17)	Special Action. Issue was whether the trial court abused its discretion in ordering Husband, under penalty of incarceration for civil contempt, to sign an agreement prepared by Wife's counsel that was inconsistent with a written and signed Rule 69 agreement. The Court of Appeals granted relief and remanded to the trial court for further

	proceedings. The parties signed a handwritten document memorializing their agreement at mediation under Rule 69. An MSA-1 was prepared and corrected with Husband's requests with the exception of the issue of spousal maintenance due after a first mortgage on a residence was paid in full. Wife made the change in MSA-1 but Husband decided to have the entire matter settled by the courts. Wife filed a Motion to Enforce and asked the trial court to order Husband to execute MSA-1. After hearing, the court granted Husband's Motion to Set Aside the Decree and ordered the parties to submit a revised Decree and MSA. The court cautioned Husband that if he unreasonably delayed, Wife may be permitted to renew her request for attorney's fees. Wife's Motion for Reconsideration was denied and she prepared MSA-2. Husband refused to sign complaining that it did not comply with the Rule 69 agreement. The trial court entered an order adopting MSA-2 and awarding Wife attorney's fees. Husband's Motion for Reconsideration was denied and he did not sign MSA-2. Wife filed a Petition for Contempt. Husband filed a Special Action. The trial court entered another order requiring Husband to sign MSA-2 within ten days or be found in contempt subject to incarceration. In the meantime, the Court of Appeals declined jurisdiction of the first Special Action. It then accepted jurisdiction of the second Special Action filed by Husband. After noting the fairness requirements of A.R.S. § 25-317(B), and the requirement to follow Rule 69, the court noted that the agreement must also satisfy all requirements for a valid contract. Although MSA-2 met the requirements under Rule 69, Husband contested his assent to the agreement. The trial court was free to conclude otherwise, but the Court of Appeals found no authority, under statute or rule, suggesting a trial court may order a party to execute an MSA that he disputes. Although Husband's signature was unnecessary for the court to find a binding agreement, the agreement could have been merged into a Decree and preserved the challenge to the MSA in any appeal of the Decree. The court noted authority from the U.S. Supreme Court that in seeking contempt sanctions a court is obligated to use the least possible power adequate to the end proposed. Nonetheless, Husband was not entitled to simply ignore the court's order, even if it was entered in error. The orders of attorney's fees were not overturned. *Note:* In Footnote 10 the court explained that the court could reject or modify an MSA if it found its provisions unfair but did not have such power where the issue was

	something other than fairness. *Additional Note:* The court rejected Wife's assertion that Rule 70(A), A.R.C.P. and Rule 89(A), A.R.F.L.P., require a third party to sign because there was no Decree entered yet. *Practice Tip*: If you can't get contempt then try other sanctions.
11. *McClendon v. McClendon,* 243 Ariz. 399, 408 P.3d 440 (App. 12/7/17)	Held: When making a determination as to a substantial and continuing change of circumstances for a modification of spousal maintenance under A.R.S. § 25-327(A), the relevant time period is based on the most recent court order, whether entered after a trial or as part of a Rule 69 agreement. *Practice Tip*: For changed circumstances you have to compare with the most recent order.
12. *Lillqvist v. Fish,* 2017 WL 6521058 Memo Decision (12/21/17)	Petition for Enforcement of Decree. The Decree incorporated a Rule 69 PSA requiring Wife to transfer to Husband an annuity and Maine residence. The trial court held a hearing on contested issues of fact and ordered Wife to transfer the annuity and Maine residence to Husband. The trial court also found Wife in contempt and ordered her to pay attorney's fees. The Court of Appeals accepted jurisdiction on the annuity and Maine residence, affirmed the trial court's finding of contempt on the annuity, but found the trial court abused its discretion on the finding of contempt regarding the Maine residence because Wife had signed over the residence to Husband before the hearing. *Note:* The Court of Appeals rejected Wife's argument that the PSA was not a court order that could be enforced by contempt because it was incorporated into the Decree which ordered the parties to comply with it "as the order of this court." *Practice Tip*: To avoid contempt, have your client comply even after the filing of a petition.
13. *Engstrom v. McCarthy,* ___ Ariz. ___, ___ P.3d ___ (2018) WL 327181 (1/9/18)	Pre-Decree. At the RMC the parties entered into a Rule 69 agreement to share joint legal decision-making authority and parenting time. The trial court approved the agreement as an order of the court. At trial, Mother contended she thought the agreement was only temporary. She also presented a domestic violence expert that testified Father had engaged in significant domestic violence that precluded an award of joint legal decision-making authority. As a result, the trial court entered an order of sole legal decision-making authority to Mother. The Court of Appeals vacated the trial court's order modifying the Rule 69 agreement and subsequent order. The court stated that while the trial court is vested with authority to reject a Rule 69 agreement,

	neither the statute nor the Rule vests the trial court with discretion to modify an agreement the court has adopted as an order. The court went on to note that there are approved and adopted methods for modifying the order if a substantial and continuing change of circumstances has occurred. The decision of the trial court was remanded to determine whether Father had committed acts of domestic violence, whether he had met his burden of proof that parenting time would not endanger the child or significantly impair the child's emotional development, and to place such conditions on parenting time that best protected the child and the other parent from further harm. *Practice Tip*: To make a Rule 69 agreement binding, make it part of an order.
14. *Logan v. Logan*, 218 WL 358026 Memo Decision (1/11/18)	Pre-Decree. On the day of trial the parties entered into a Rule 69 agreement. The court confirmed the agreement as binding under Rule 69 and ordered Husband's counsel to prepare a formal stipulation containing the agreement of the parties. Wife filed a draft Consent Decree two months later after Husband provided no written input or objections to the proposed Decree. Seventeen days later, Husband filed an Objection under Rule 81. The trial court found the Objection untimely in that it should have been filed under Rule 81 within five days. The court signed and filed the proposed Decree as proposed by Wife. Fifteen days thereafter, Husband filed a Motion to Amend the Decree contending that Wife added terms to the Decree which were inconsistent with the Rule 69 agreement. The court denied Husband's Motion as untimely. The Court of Appeals vacated and remanded the order on the grounds Husband had 15 days under Rule 83 and six months under Rule 85 to file his Motions. *Practice Tip*: Different rules have different time periods, so use them to your advantage.
15. *Matter of Strong v. Owens*, 2018 WL 504242 Memo Decision (1/23/18)	Pre-Decree. At a hearing before the court, the parties entered into a full agreement, including legal decision-making and parenting time, with the exception of one credit card. The trial court entered an order approving and adopting the agreement and found that it was in the best interests of the Child. Thereafter, Mother filed a Motion to Set Aside the Rule 69 agreement. Father filed a Notice of Lodging with the form of Decree. The court set a hearing seven months after the Rule 69 agreement. At the hearing the court addressed all issues. Also, briefly discussed was an existing Order of Protection for Mother and the Child

	against Father, set to expire as to the Child only at the end of the day. The relevance of the Order of Protection was not fully discussed because the parties were not prepared for that issue and different counsel was involved. After the ruling the court ordered the parties to file a signed Consent Decree within two weeks. Mother did not sign Father's second proposed Decree. Father filed a second Notice of Lodging and the court set another conference. Mother entered an untimely objection to the second proposed Decree. The court entered the Decree over Wife's contention that the Order of Protection required the court to conduct a hearing on whether the agreement and parenting plan were in the best interests of the Child. Mother filed a Motion for New or Amended Judgment and attached the Order of Protection. With regard to the Order of Protection, the Court of Appeals stated the issue turned on whether the existence of an Order of Protection, not properly introduced into evidence by either party, but later attached to a Motion for New Trial, necessitated an independent determination of domestic violence by the Superior Court under A.R.S. § 25-403, et.seq., notwithstanding the Rule 69 agreement. The Court stated that the existence of an Order of Protection did not satisfy A.R.S. § 25-403.03 and there was nothing before the court to show the existence of significant domestic violence under the statute. While evidence of domestic violence may preclude the grant of joint legal decision-making and parenting time under A.R.S. § 25-403.03, the party seeking relief under the statute must properly present the matter before the court. The Court noted that A.R.S. § 25-411 provided a method for modifying the Decree if Wife had wanted to do so. Thus, the trial court did not err when it entered the Decree awarding joint legal decision-making and parenting time. With regard to the rest of the property and financial issues, Wife further argued that the trial court failed to independently determine the Rule 69 agreement was fair and equitable under *Sharp*. The Court stated that the Rule 69 agreement was valid and binding and it was the burden of the party challenging the validity of the agreement to prove any defect. The Court distinguished the burden of proof in *Sharp* because it did not involve a presumptively valid Rule 69 agreement where the moving party bore the burden of proof. Unlike *Sharp*, both parties met with counsel, negotiated an agreement, presented it to the Superior Court and testified under oath that they were familiar with and understood the agreement, which was fair and reasonable, without coercion or duress. The trial court did not

	err when Mother subsequently tried to set aside the Rule 69 agreement because the record contained sufficient evidence that the agreement was fair and equitable. The fact that there remained outstanding issues at the time of the agreement did not invalidate the Rule 69 agreement. The Court also rejected Wife's claims that Husband failed to produce items during discovery. The Court affirmed the division of property and the calculation of child support, including a deviation. The only portion of the order rescinded was the appointment of a parenting coordinator without written stipulation. *Practice Tip*: Courts tend to approve Rule 69 agreements if there is a way to do so.
16. *Bohac v. Wiese*, 2018 WL 654805 Memo Decision (2/1/18)	Post-Decree. Father filed Petition to Modify Legal Decision-Making, Parenting Time and Child Support. E-mails between counsel reached a final resolution and the parties jointly submitted a Notice of Settlement. Thereafter, Father insisted that there was no settlement that had been reached. Mother had argued that there was a Rule 69 binding agreement. The court held an evidentiary hearing to determine the validity of the agreement. Father testified his former attorney was inept and fraudulently induced Mother's counsel and Father into the Rule 69 agreement. Father's former counsel testified that the Order lodged with the family court were consistent with the terms of the settlement agreement. The trial court found a binding settlement agreement under Rule 69. The Court of Appeals affirmed the trial court. The court held that the letters and e-mails between counsel evidenced an agreement. Father agreed to the agreement and Father did not object to the Joint Notice of Settlement. Father contended that his lack of a signature violated a Minute Entry issued by the trial court. The court held that the family court did not have the power to add or subtract to the requirements of Rule 69 and the agreement between counsel was still binding even though not personally signed. The court further held that where Father had alleged his attorney was inept and fraudulently induced him to enter into the agreement, the attorney/client privilege was waived and the lawyer was properly called as a witness. By the same token, Father was not entitled to call Mother's attorney as a witness because she had done nothing to waive her attorney/client privilege to communications. *Practice Tip:* Your client may waive the attorney/client privilege by claiming you did something wrong regarding the Rule 69 agreement.

IV.

5 REPORTED RULE 69 CASES (2018-2020) AND 2 RECENT MEMORANDUM DECISIONS (2021)

FIVE REPORTED RULE 69 CASES (2018-2020)

AND

TWO RECENT MEMO DECISIONS (2021)

1. *Hutki v. Hutki*, 244 Ariz. 39, 417 P.3d 804 (App. 2018).

Facts: Pre-Decree; 41-year marriage; H self-employed investor; Kotzin did valuation of H's business; question of whether H provided all records. Private mediation; Rule 69 on all but one small issue required for trial; PSA acknowledged voluntary, with counsel, equitable distribution; six months after PSA W filed Motion requesting *Sharp* hearing on fairness; H lodged Decree and PSA; W objected; H filed Amended Decree and Response to W's Motion.

Trial Court: Denied W's Motion, found PSA fair and equitable and entered Amended Decree.

Issues on Appeal: (1) Denial of W's Motion for *Sharp* hearing; and (2) fairness of PSA.

Court of Appeals: Affirmed. Denial of Motion not abuse of discretion on grounds PSA was fair.

Legal Principles:

1. Rule 69 Applies to a pre-Decree PSA.
2. Rule 69 supersedes *Sharp* and *Harber* on burden of proof. The party challenging the Rule 69 Agreement bears the burden.
3. *Sharp* involved claims of duress, coercion, undue influence, or lack of counsel where there was no evidence in the record as to the extent of the community assets. Neither *Sharp* nor A.R.S. § 25-317 requires a hearing in all cases.
4. This case, unlike *Sharp*, had sufficient information in the record upon which to make a determination of fairness.
5. A.R.S. § 25-317(B) uses the term fairness, but not equitable. Equitable requires fairness, but not necessarily an equal allocation of property.

2. *Hammett v. Hammett*, 247 Ariz. 556, 453 P.3d 1145 (App. 2019).

Facts: Pre-Decree; H and W met in the Philippines; married in Nevada; during marriage H owned sole and separate home and took out a loan in his sole name for $78,600.00. The same month H purchased a condo for $58,000.00 in both parties' names as CPWROS. Two weeks later H filed for divorce of six-year marriage. H later moved to dismiss the dissolution because W's first marriage in

the Philippines had never been dissolved and H and W falsified a Death Certificate to get W a Visa. W admitted she never had first marriage annulled based on her husband's death.

Trial Court: Dismissed the dissolution.

Additional Facts: H petitioned for annulment. The parties entered a Rule 69 Agreement that H's first house was his sole and separate property and they would each keep their own accounts and debts. Evidence at trial considered the interest in the condo, the loan and W's allegations she contributed $30,000.00 in repairs and improvements to the condo after date of service.

Trial Court: Ruled all community property rights were void *ab initio* from date of marriage. Condo was owned as tenants in common and W was ordered to buy out H's one-half interest with a loan or sell. W was also to pay all obligations on the condo and declined both parties' requests for additional funds. Later, after motions for reconsideration, the condo was ordered sold and all proceeds of $33,793.81 went to H after W paid her portion of the loan and reimbursements to H.

Court of Appeals: Trial Court's Orders were vacated and remanded.

Legal Principles:

1. In annulment cases the Court must still equitably divide the community property and debts.

2. The Rule 69 Agreement was predicated on the incorrect assumption that the parties acted with full knowledge of their property rights and the Court could not correctly find the agreement was fair and equitable, citing *Buckholtz*.

3. The Court cannot unwind the sale of the condo, but it can reallocate the disposition of property and debts, including reimbursement claims under *Bobrow*.

4. H's loan on his sole and separate house was a community debt incurred during the marriage.

5. The presumption of a community debt was not negated by the fact that it was secured with H's sole and separate home, unless an exception applied. This was not a guarantee or a purchase money loan on the condo. Therefore, no exception applied.

3. *Lane v. LaBianca*, 249 Ariz. 301, 468 P.3d 1262 (App. 2020).

Facts: Pre-Decree; temporary orders hearing; short-term marriage under two years; one child six months old; M left with child to Ohio to visit and did not return; F obtained emergency order granting him sole LDM and PC. Prior to the

first hearing the parties reached a Rule 69 Agreement for JLDM and equal PT until the date of the next hearing six weeks later. M filed a Petition for Relocation and it was consolidated.

Trial Court: Granted M's Petition to relocate, granted M sole LDM and F three days of PT per week in Ohio. The Court considered the 403 factors but did not mention or consider the 408 factors.

Court of Appeals: Vacated and remanded for 408 findings.

Legal Principles:

1. The trial court must consider the 408 factors in a relocation case, but written findings are not required for temporary orders.

2. The trial court did not abuse its discretion in modifying the Rule 69 Agreement without a substantial and continuing change of circumstances because the Rule 69 Agreement only lasted until the next hearing so the trial court was "writing on a clean slate."

4. *Gonzalez-Gunter v. Gunter*, 249 Ariz. 489, 471 P.3d 1024 (App. 2020).

Facts: Post-Decree modification/enforcement action. 2015 Consent Decree awarded M and F JLDM and equal PT of two children without child support to either. Two years later M sought modification of LDM, PT and enforcement of reimbursement claims based on F's abuse of drugs and verbal abuse to children. In F's deposition he stated he would pay "a hundred a month" for each child's gymnastics classes.

Trial Court: Designated M as PC parent and reduced F's PT to 72 days per year, but denied M's claim for reimbursement of gymnastics classes. Upon reconsideration, the Court affirmed F's statement that he would pay $100 per month for each child's gymnastic classes and entered a judgment for $9,600.00 for four years of classes ($1,200 x 2 = $2,400 x 4).

Court of Appeals: Affirmed.

Legal Principles:

1. A.R.S. § 25-403.02(B) does not mandate equal PT absent parental unfitness or endangerment. The family court has discretion to determine PT based on all relevant evidence.

2. F's gymnastic reimbursement statement was a binding statement placed on the record under Rule 69(a)(2).

3. F's arguments that his statement was not an enforceable contract and related only to future gymnastics expenses were waived because they were raised for the first time on appeal.

5. *Eans-Snoderly v. Snoderly*, 249 Ariz. 552, 473 P.3d 337 (App. 2020)

Facts: Post-Decree enforcement action. A 2000 Consent Decree incorporated an agreement requiring H to pay W $300,000 for her interest in H's business. The Decree stated H would pay his share from proceeds of the sale of the marital residence less $50,000 and then make monthly payments. However, the commencement date, the amount, and duration of the monthly payments were left blank. The Decree also provided that H would maintain W as a beneficiary on a life insurance policy equal to the amount of the remaining debt and that W could file for contempt if H failed to pay the debt. A 2007 handwritten agreement set forth payment terms. H made some payments, but filed BK in May 2015 without discharging W's debt. In October 2015 W filed the 2007 agreement under Rule 69 and sought contempt. H filed MSJ asserting W's failure to renew the judgment and laches.

Trial Court: Granted H's MSJ on failure to renew and laches.

Court of Appeals: Vacated and remanded.

Legal Principles:

1. Denial of Contempt is not appealable, but COA treated as Special Action and accepted jurisdiction.

2. A.R.S. § 25-317(E) grants jurisdiction to the trial court over contempt actions for non-payment of a debt in a PSA.

3. The judgment renewal statute did not bar W's Petition because: (a) the debt in the Decree was not for the payment of a specific amount at a certain time; (b) the renewal statute does not begin to run until a right to execute exists; (c) the Rule 69 Agreement was not a judgment because it was never submitted to the Court or incorporated into an Amended Decree; and (d) the requirement to maintain a life insurance policy was not a money judgment.

4. Questions of fact existed on the issue of laches which required an evidentiary hearing and precluded an order granting summary judgment.

Two 2021 Memo Decisions

6. *Nguyen v. Trinh*, No. 1 CA-CV 20-0325 FC (2/9/21)

Facts: H and W married in Vietnam in 1975; in October 2018, H filed for dissolution; the parties' adult daughter worked with H to draft a Rule 69 Agreement that divided some but not all of the parties' property. Although represented, H signed the Rule 69 Agreement in January 2019 without his counsel present. W signed shortly thereafter. W moved the Court to approve the Rule 69

Agreement and the Court granted W's Motion without a Response. Five months later, H moved to set aside the Agreement arguing he had been coerced, did not fully understand its contents or legal effects, and it unfairly divided the parties' assets.

Trial Court: Denied H's Motion to set aside, entered the Decree and awarded W $10,000.00 in attorney's fees and costs.

Court of Appeals: Affirmed.

Legal Principles:

1. Fair Trial

a. H was not deprived of a fair trial because the Court-appointed interpreter adequately interpreted the proceedings, the Court properly ordered re-questioning of the daughter from the beginning, Husband raised no objection at trial, and H did not cite any testimony that should have been interpreted but was not.

b. The Court acted within its duty and discretion under A.R.E. 611 to cut-off and redirect H's testimony.

c. H, an unrepresented litigant, was held to the same standard as an attorney.

d. With regard to H's argument he did not understand fully the proceedings, the Court indicated it did not reweigh evidence or determine the credibility of witnesses.

2. The Trial Court Correctly Approved the Rule 69 Agreement.

a. The A.R.F.L.P. applied to the Rule 69 Agreement because the Rules applied to all family law cases and H had filed a Petition for Dissolution.

b. The agreement was fair and equitable because H failed to prove a "defect" under Rule 69(c). It was also not unfair under A.R.S. § 25-317(B). Even though § 25-317 does not use the term "equitable," citing *Buckholtz*, when a separation agreement is presented to the Court, the obligation is to determine whether it is unfair.

c. Confusion and uncertainty regarding the parties' retirement and other financial accounts were not defenses because the daughter who assisted in drafting the agreement testified that she urged H to include those items, but he intentionally omitted them as not important. There was also evidence that the agreement had been explained to Husband in both English and Vietnamese multiple times.

3. Admission of the Parties' Daughter's Testimony was Proper.

Even though the daughter did not have a law license, Rule 69 does not require that a lawyer prepare an agreement subject to the Rule. Bias is within the credibility of the trier of fact.

4. The Court was Correct in Ordering Reimbursement for Community Waste.

When a spouse has wasted or dissipated marital assets, the Court may apportion the community property in a manner designed to compensate the other spouse. *Helland v. Helland*, 236 Ariz. 197 (App. 2014). Once the spouse makes a *prima facie* showing to support the waste claim, the other spouse bears the burden to demonstrate the absence of waste. The daughter testified about the amount H spent on his mistress and admitted financial records supporting the testimony.

5. The Court Did not Error by Awarding W Attorney's Fees.

Under A.R.S. § 25-324(A), H was delinquent in responding to discovery requests requiring W to issue several subpoenas to obtain information on H's financial accounts. H also took unreasonable trial positions, including that the parties' marriage certificate was fake and the parties were not married. W requested almost $20,000 in fees and costs and was awarded $10,000.

6. W was Also Awarded Attorney's Fees on Appeal.

7. *Sembower v. Sembower*, No. 1 CA-CV 20-0210 FC (3/4/21)

Facts: In a Colorado PMA the parties agreed that the property they now owned would remain their separate property as described in Exhibits A and B. Exhibit A included H's retirement account which had an approximate value of $860,000. On dissolution the parties agreed that each would have an equal interest in all property acquired by either party during the marriage (except that as merely the result of an increase in value of separate property) and that all retirement accounts would remain each party's separate property, including any appreciation, income or other increase. H's net worth was over a million dollars at the time of the agreement and W's liabilities exceeded her assets. There was also a severance clause, each party entered the agreement voluntarily and waived further disclosures. At the time of the agreement and the marriage, the account was valued at a little over $1.1 million. When the dissolution was filed the account was worth $3.2 million. W challenged the agreement because H never disclosed the value of the retirement account prior to the marriage. She conceded that Exhibit A included the account and that the balance would remain H's sole and separate property. She also alleged that H wanted the agreement, drafted it, and gave it to

her and on the day they signed it. H alleged he made corrections so W could keep her 401(k) and home. During trial the Court had counsel come back into chambers to "chat." Thereafter, H waived certain arguments about the PMA's application to the real estate.

Trial Court: Entered the Decree recognizing the validity of the PMA, ordered an equal division of community property and debt, including community contributions to the retirement account.

Court of Appeals: Affirmed.

Legal Principles:

1. A contract is not ambiguous just because parties disagree about its meaning. If it is susceptible to more than one interpretation it is a question of law, but the Court of Appeals defers to the trial court's findings of fact.

2. Citing *Koelsch* and *Cockrill*, the trial court correctly ruled that W was entitled to her share of the contributions to the account from community property.

3. The entire amount of the account was not transmuted by community contributions.

4. W's claims that she signed under duress and the agreement was unconscionable could not be considered because she did not cross-appeal the ruling determining the agreement was valid.

5979043.1 \ March 8, 2021

V.

WEST'S CITING REFERENCES TO RULE 69 (2/1/18 – PRESENT)

Citing References (37)

Title	Date	NOD Topics	Type
1. Toller v. Toller 2021 WL 727534, *5 , Ariz.App. Div. 1 ¶1 Iryna Toller ("Mother") appeals the superior court's modification of child support and denial of her request that Robert Toller ("Father") reimburse her for a portion of the...	Feb. 25, 2021	—	Case
2. Augee v. Wright 2021 WL 566316, *1+ , Ariz.App. Div. 1 ¶1 Matthew Augee ("Husband") appeals from a decree of dissolution of marriage. We conclude the court erred when it found Husband was an agent for a non-party without holding an...	Feb. 16, 2021	—	Case
3. Nguyen v. Kimquy Thi Trinh 2021 WL 475042, *1+ , Ariz.App. Div. 1 ¶1 Anton Nguyen ("Husband") appeals the superior court's approval of an Arizona Rule of Family Law Procedure ("Rule") 69 agreement and entry of a decree of dissolution. For the...	Feb. 09, 2021	—	Case
4. Jones v. Jones 2020 WL 7587115, *1+ , Ariz.App. Div. 1 ¶1 Randy Jones ("Husband") appeals from the superior court's orders denying both his request to rescind a settlement agreement and his motion to hold an evidentiary hearing on the...	Dec. 22, 2020	—	Case
5. Dole v. Dole 2020 WL 7392988, *2+ , Ariz.App. Div. 1 ¶1 Phillip Dole ("Father") appeals from a decree of dissolution ("Decree") and contests the trial court's (1) calculation of his income for child support and spousal maintenance;...	Dec. 17, 2020	—	Case
6. Kennedy v. Kennedy 2020 WL 7395455, *1 , Ariz.App. Div. 1 ¶1 Michael Kennedy ("Father") appeals from a superior court order modifying legal decision-making authority, parenting time, and child support. For the following reasons, we...	Dec. 17, 2020	—	Case
7. Prince v. Prince 2020 WL 6498780, *2+ , Ariz.App. Div. 1 ¶1 Kendall Prince ("Father") appeals the family court's ruling in favor of Tammy Prince ("Mother") on cross petitions for enforcement of a consent decree. For the following...	Nov. 03, 2020	—	Case
8. Hernandez v. Hernandez 2020 WL 6503613, *1+ , Ariz.App. Div. 1 ¶1 Nicholas Christopher Hernandez (Husband) challenges the distribution of property and debts in a decree of dissolution of marriage with Ralphina Marie Hernandez (Wife). For the...	Oct. 29, 2020	—	Case
9. Reyes v. Reyes 2020 WL 6286303, *1+ , Ariz.App. Div. 1 ¶1 Sandra Reyes ("Wife") appeals the trial court's order denying her motion to withdraw from an agreement reached pursuant to Arizona Rule of Family Law Procedure ("Rule") 69....	Oct. 27, 2020	—	Case
10. Prince v. Prince 2020 WL 5016688, *2+ , Ariz.App. Div. 1 ¶1 Kendall Prince ("Father") appeals the family court's ruling in favor of Tammy Prince ("Mother") on cross petitions for contempt and enforcement of a consent decree. We treat the...	Aug. 25, 2020	—	Case

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Title	Date	NOD Topics	Type
11. Hovannisian v. Hovannisian 2020 WL 4597101, *6+ , Ariz.App. Div. 1 ¶1 Connie E. Hovannisian ("Wife") appeals from several rulings in the decree dissolving her marriage to Damon V. Hovannisian ("Husband"). For the reasons set forth below, we vacate...	Aug. 11, 2020	—	Case
12. Markey v. Markey 2020 WL 3422841, *1+ , Ariz.App. Div. 1 ¶1 James Markey ("Husband") appeals from the decree dissolving his marriage to Sherry Markey ("Wife"). For the following reasons, we affirm. ¶2 Husband and Wife were married in...	June 23, 2020	—	Case
13. Prince v. Prince 2020 WL 3303074, *1+ , Ariz.App. Div. 1 ¶1 Aja Prince (Wife) appeals the superior court's entry of the decree of dissolution and an award of attorneys' fees to Jermaine Prince (Husband). Because Wife and Husband entered...	June 18, 2020	—	Case
14. Aguilar v. Aguilar 2020 WL 3316061, *1 , Ariz.App. Div. 1 ¶1 Rosa Aguilar ("Mother") appeals the family court's granting Carlos Aguilar ("Father") sole legal decision-making authority and his request to relocate the children to Tucson....	June 18, 2020	—	Case
15. Love v. Love 2020 WL 3095893, *4 , Ariz.App. Div. 1 ¶1 Ashley Love ("Mother") appeals the legal decision-making, parenting-time, and child-support orders made by the superior court in the decree dissolving her marriage to Lee Love...	June 11, 2020	—	Case
16. Gonzales v. Gonzales 2020 WL 2769012, *2+ , Ariz.App. Div. 1 ¶1 Appellant Simon Gonzales ("Husband") challenges the superior court's grant of summary judgment to Appellee Tina J. Gonzales ("Wife") on his challenge to the parties' property...	May 28, 2020	—	Case
17. State ex rel. Hollingsworth v. Ferrill 2020 WL 2394861, *2+ , Ariz.App. Div. 1 ¶1 Kevin Ferrill ("Father") appeals the family court's final order restricting his parenting time to supervised visitation and the family court's temporary order requiring him to...	May 12, 2020	—	Case
18. Rosenberg v. Conzoner 2020 WL 1686804, *2+ , Ariz.App. Div. 1 ¶1 Samantha Rosenberg ("Wife") appeals the superior court's judgment in these post-dissolution proceedings. She argues the judgment does not accurately reflect the terms of the...	Apr. 07, 2020	—	Case
19. Soebbing v. Soebbing 2020 WL 1313613, *1+ , Ariz.App. Div. 1 ¶1 Sara Soebbing ("Mother") appeals the superior court's order modifying her parenting time. We affirm the court's modifications to parenting time but vacate its modifications to...	Mar. 19, 2020	—	Case
20. Mathis v. Mathis 2019 WL 6712317, *1 , Ariz.App. Div. 1 ¶1 Monica J. Mathis ("Mother") appeals three aspects of the superior court's order of past child support for the eight months between the filing of the petition for dissolution and...	Dec. 10, 2019	—	Case

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Title	Date	NOD Topics	Type
21. Butler-Hintz v. Hintz 2019 WL 4695884, *1 , Ariz.App. Div. 1 ¶1 Frederick Ernest Hintz ("Husband") appeals the superior court's dissolution finding of a community lien on Husband's condominium and the calculation of the community's share of...	Sep. 26, 2019	—	Case
22. Pohl v. Pohl 2019 WL 4727262, *2+ , Ariz.App. Div. 1 ¶1 Kent Douglas Pohl ("Father") appeals the superior court's order declining to exercise jurisdiction to modify a child custody determination. We affirm. ¶2 Father and Kimberley...	Sep. 26, 2019	—	Case
23. Potter v. Potter 2019 WL 4643821, *1+ , Ariz.App. Div. 1 ¶1 Phillip Terry Potter ("Father") appeals from a child support order and the award of attorneys' fees to Betsy Jo Potter ("Mother"). For the reasons stated below, we vacate the...	Sep. 24, 2019	—	Case
24. Latif v. Eldilemi 2019 WL 3822224, *1 , Ariz.App. Div. 1 ¶1 Hazim Eldilemi ("Father") appeals from the decree of dissolution ("Decree") ending his marriage to Hana Latif ("Mother"). For the following reasons, we affirm. ¶2 In 2016,...	Aug. 15, 2019	—	Case
25. Chalmers v. Chalmers 2019 WL 2651064, *2+ , Ariz.App. Div. 1 ¶1 William Chalmers ("Husband") appeals from the trial court's adoption of a consent decree that incorporated a property settlement agreement and dissolved his marriage to Renata...	June 27, 2019	—	Case
26. Cohen v. Cohen 2019 WL 2513715, *1+ , Ariz.App. Div. 1 ¶1 Noreen Cohen ("Wife") appeals the denial of her motion for new trial after entry of the decree in her dissolution action against Harold Cohen ("Husband"). For the following...	June 18, 2019	—	Case
27. Rose v. Evers 2019 WL 2465137, *1 , Ariz.App. Div. 1 ¶1 Kerry William Rose appeals the superior court's dismissal of his complaint against his wife, Elizabeth Evers, for breach of fiduciary duty and contribution to community debt. We...	June 13, 2019	—	Case
28. Willis v. Willis 2019 WL 2395094, *1+ , Ariz.App. Div. 1 ¶1 John Henry Willis III ("Husband") appeals from rulings concerning the sale of the marital residence and marital waste in the dissolution of his marriage to Gina Marie Willis...	June 06, 2019	—	Case
29. Coburn v. Rhodig 2019 WL 1530298, *1+ , Ariz.App. Div. 1 ¶1 Michael Rhodig ("Husband") appeals from the spousal maintenance arrearage order in favor of Laurin Coburn ("Wife"). For the reasons stated below, we affirm the order. ¶2 The...	Apr. 09, 2019	—	Case
30. Perkins v. Perkins 2019 WL 1306221, *1+ , Ariz.App. Div. 1 ¶1 Mindy Perkins ("Mother") appeals the superior court's order issued on competing petitions she and Kyle Perkins ("Father") filed to modify legal decision-making and parenting...	Mar. 21, 2019	—	Case

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Title	Date	NOD Topics	Type
31. Hanger v. Hanger 2018 WL 5729360, *2+ , Ariz.App. Div. 1 ¶ 1 Joel Hanger ("Father") appeals from the denial of his two motions to set aside a stipulated child support order and his petitions for simplified modification of child support....	Nov. 01, 2018	—	Case
32. Lacy v. Lacy 2018 WL 2107561, *1 , Ariz.App. Div. 1 ¶ 1 Jill J. Lacy ("Wife") appeals the superior court's entry of a decree of dissolution denying her spousal maintenance, ordering her to pay John K. Lacy's ("Husband") attorneys'...	May 08, 2018	—	Case
33. Herrera v. Rivero 2018 WL 1415104, *1 , Ariz.App. Div. 1 ¶ 1 Gloria Herrera (Mother) appeals the family court's division of property in the decree dissolving her marriage to Jorge Rivero (Father). For the following reasons, we affirm....	Mar. 22, 2018	—	Case
34. Kostadinova v. Stephens 2018 WL 1321498, *1+ , Ariz.App. Div. 1 ¶ 1 Attorney Kristin Roebuck–Bethell ("Counsel") appeals the superior court's award of attorney's fees and costs to Bryan M. Stephens ("Father") as a sanction for having...	Mar. 15, 2018	—	Case
35. Matthews v. Robles 2018 WL 897683, *1+ , Ariz.App. Div. 1 ¶ 1 Dustin Matthews ("Father") appeals the superior court's ruling modifying child support, legal decision-making, and parenting time. For reasons that follow, we affirm. ¶ 2...	Feb. 15, 2018	—	Case
36. Marinello v. Glover 2018 WL 770506, *1 , Ariz.App. Div. 1 ¶ 1 Jennifer Marinello (mother) appeals (1) the judgment against her and in favor of Terrance Glover (father) for an overpayment of child support, (2) the denial of her motion for...	Feb. 08, 2018	—	Case
37. Bohac v. Wiese 2018 WL 654805, *2+ , Ariz.App. Div. 1 ¶ 1 Jeremy Wiese ("Father") appeals the family court's order concerning the division of legal decision-making authority, parenting time, and child support between himself and...	Feb. 01, 2018	—	Case

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VI.

WAYS TO ENFORCE OR CHALLENGE A RULE 69 AGREEMENT

WAYS TO ENFORCE OR CHALLENGE A RULE 69 AGREEMENT

Ways to Enforce	Ways to Challenge
• Have one of the following: ✓ Signed writing by parties or counsel ✓ Terms stated on record before judge, commissioner, judge pro-tem or court reporter ✓ Terms stated in audio recording before a mediator or settlement conference officer • Submit to Court for approval promptly • Have counsel for both parties and verify each party is satisfied with the counsel they have received • If no counsel, verify had right to counsel and knowingly chose otherwise • State voluntarily without duress or coercion • Verify all disclosures have been made and that each party needs no further disclosures to enter into agreement • Identify assumptions where applicable • Eliminate ambiguities and inconsistencies • Confirm fair and equitable and state specifics • Double-check child support and other calculations • Include findings of fact that the Court has to make on each issue • Affirm that it is binding upon signing and entry • Set reasonable time limits • Don't rush, give time to read, make corrections, initial each page, confirm they read and understand it • Tell clients you are doing this for their own benefit and the consequences of challenge • If negotiated w/o counsel, make sure client understands the options and consequences • Video the settlement meeting • Prove delay, reliance, ratification	• Disclosure violation • Intimidation • Domestic abuse • Illegality • Incapacity • Impracticability • Fraud/misrepresentation • Mistake • Duress • Undue Influence • Ambiguity • Omitted or inaccurate findings • Unconscionability • Impossibility • Lack of mutual assent • Unreasonable • Unfair • Improprieties in signing or notarization or procedure • Failure to timely file agreement • Inclusion of unenforceable penalty • Inconsistency • Fraud upon the court • Omission of asset/debt • Miscalculation • Misunderstand property characterization of property or debts