

American Academy of Matrimonial Lawyers
Arizona Chapter
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IN THE SUPREME COURT OF THE STATE OF ARIZONA

In the Matter of
Emergency Petition to Amend Rule
6, Arizona Rules of Family Law
Procedure

Supreme Court No. R-24-0059

The Arizona Chapter of the American Academy of Matrimonial Lawyers submits the following comment in support of the above-numbered Petition, including the emergency request for the Petition.

American Academy of Matrimonial Lawyers

The American Academy of Matrimonial Lawyers (AAML) was founded in 1962 with the goal of establishing a group of talented, reputable negotiators and litigators. The AAML endeavors to help individuals and families find capable lawyers near them, and our organization now has more than 1,650 members across 50 states. The AAML is nationally recognized as the preeminent organization for family law attorneys.

At the Arizona Chapter of the AAML, we are committed to fostering the continued professional development of family law attorneys and other legal professionals working in matrimonial law. We facilitate a wide range of events that educate family lawyers on best practices and emerging trends, allowing our members to continue to offer high-quality legal services to their clients. 28 of the 29 Fellows in the Arizona Chapter of AAML (listed on the signature page) are certified specialists in Family Law through the State Bar of Arizona.

Argument

In simple terms, the Opinion dated November 26, 2024, from Division One of the Arizona Court of Appeals in *Sobrino v. Fisk*, -- P.3d --, 2024 WL 4887123 (11/26/2024), has the potential to cause significant harm to litigants in family court throughout Arizona. The result of the Opinion is essentially an unlimited number of changes of judge under ARFLP 6, due to the never-ending nature of family law proceedings. It also could have the effect of portions of the proceedings being heard by two or more judges contemporaneously. Even worse, smaller counties with limited numbers of judges could easily “run out” of judges due to the changes of judge, resulting in other counties having to take over said cases. The Petition fixes these

problems and puts Arizona courts back into the same position that most lawyers thought was the Rule, before the *Sobrino* Opinion.

Every issue outlined in the Petition is accurate, and in fact, likely an understatement of the issues that the *Sobrino* Opinion will likely cause. The various issues with the current Rule, under *Sobrino*, are broken down as follows:

Issue 1 – Multiple Post-Decree proceedings

Perhaps the most unintended negative consequence of the *Sobrino* Opinion is the concept of multiple post-decree petitions. It is not uncommon in family court for one party to file a post-decree petition to modify parenting time, and then for the other party to file some other post-decree petition. In that case, as *Sobrino* holds that each petition is a new “action” the parties could continue filing post-decree petitions with the right to a change of judge being renewed after each petition.

As an example, if the Mother filed a post-decree petition to modify parenting time, and the parties attend a resolution management conference on said petition, neither party can change the judge as that right was waived under ARFLP 6(e)(3). During the hearing the court makes a comment that Father does not like, so Father files a post-decree petition to enforce parenting time.

As this is a new action, he has the ability to change the judge. Now the issue becomes whether one judge will hear both petitions, or whether the same facts will be told to two different judges. This allows essentially “judge shopping” simply through filing another post-decree petition.

Issue 2 – Timeliness of hearings

Secondly, as pointed out by the Petition, one of the issues caused under the *Sobrinio* Opinion is the timeliness of hearings. If a post-decree Petition is filed, and an Order to Appear is issued, a party can simply file a Notice of Change of Judge, which will then cause the hearing to be reset with another judge. Under A.R.S. § 25-407(A), parenting time and legal decision-making hearings are required to be given priority, and under A.R.S. § 25-414(B) any enforcement hearing is required to be set within 25 days. A party seeking to delay enforcement can now just file a notice of change of judge to escape these statutory safeguards.

Additionally, if the Court simply sets an evidentiary hearing out 4-5 months on a post-decree issue, under ARFLP 6, the party can file the Notice of Change of Judge up to 60 days prior to the hearing, causing even more delay. As family court judges have very busy dockets, it is not uncommon for a final trial to be 6-8 months after the filing of a petition, or longer. Allowing

new changes of judge will increase this time. And in conjunction with the issue in #1, the delay for consolidated hearings could be up to, or more than, 12 months.

Issue 3 - Enforcement proceedings and waste of judicial resources

Perhaps one of the most unfortunate results of the *Sobrino* Opinion is the effect on post-decree enforcement hearings. Unfortunately, it is all too common to have enforcement or contempt hearings shortly after a contested trial. In that case, the judge that just conducted the trial typically handles the enforcement or contempt. This allows those proceedings to be significantly shorter, as the same judge is already very familiar with the case, and likely entered the orders that are being violated. Now, under *Sobrino*, if the party did not get the trial result they wanted they can simply notice the judge on any enforcement action. This not only delays the proceedings, as the matter would have to be reset, but requires a new judge to get up to speed on the entire trial ruling and interpret the same, which the originating judge would not be required to do. This is a significant waste of judicial resources.

Issue 4 – Impact on smaller counties

Another unfortunate result of *Sobrino* is the impact that the Opinion would have on smaller counties. If every post-decree petition allows a

renewed change of judge, this means that between the parties they get two separate changes per post-decree petition. It is very foreseeable that the counties would simply run out of judges, as the parties could easily go through 4-10 judges in the matter of a couple years. Highly contentious litigants would undoubtedly file for a new judge with every ruling they were dissatisfied with. This results in counties running out of judges, resulting in neighboring counties picking up cases that they should not have to deal with. This not only taxes judicial resources, but causes logistic problems when cases are transferred, causing further delays in proceedings.

Conclusion

The Petition points out the significant issues that will undoubtedly occur if the *Sobrino* Opinion is not fixed under a rule change. The Arizona Chapter of the AAML strongly support the Emergency Petition. The granting of the Petition would allow the status quo to continue, and any further change to the Rule could be conducted through the standard process.

RESPECTFULLY SUBMITTED

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