



### Mitchell Reichman

Mitch is an Arizona State Bar Board Certified Family Law Specialist and attorney at the Phoenix law firm of Jaburg Wilk. He is a Board Member of the Executive Council of the Family Law Section of the State Bar and rated AV Preeminent by Martindale Hubbell.

Mitch has been named a “Best Lawyer in America” by Best Lawyers, “Arizona Top 10 Family Law Lawyer” by Arizona Business Magazine and a “Southwest Super Lawyer.”

Now in his thirty-first year of practice, Mitch seeks to maximize the probability of each of his clients obtaining a favorable outcome in his or her family law conflict.

## Practice Areas

Family Law

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# “Opt Out”

## It might be to your benefit to “opt out” of the Family Law Court system in Arizona

People seeking to be divorced or to resolve other problems in the Family Law Division of the Maricopa County Superior Court in the State of Arizona can find themselves trapped in a system that is not well suited to meet their needs. Despite the best efforts of well-intentioned judicial officers and administrators the fundamental problem is that there are simply too many cases and insufficient resources. In 2013 the Family Law Division was responsible for more than 12,000 active pending cases. There were close to 56,000 new family law court filings in 2013 alone! There are only 26 judges in the Family Law Division who presided over 740 motions and events **and 352 hearings per day**. As you can see the numbers are overwhelming. Inevitably, the only way for these hard working judicial officers to manage this staggering case load has been to only permit the parties a very short time to present their crucial information in the courtroom.

### **Temporary Orders**

During the transition period between the filing of your divorce proceeding and the conclusion of it there needs to be a structure put into place so that, for example, separate residences can be maintained, funds are available to both parties to meet their necessary expenses, debts are kept current and appropriate access to the children is facilitated. This is accomplished by obtaining “temporary orders”. These are court orders that remain in effect while the divorce action is pending. In complex cases these orders are critical as they could be in effect for well over a year. Temporary orders can address exclusive use and possession of a home, control of funds in accounts, legal decision making (custody), parenting time, spousal maintenance (alimony), the payment of debts, expenses and attorney fees as well as child support. Even though these orders might be of vital importance to you, judges routinely allow **only 45 minutes** for temporary orders hearings (trial). Those 45 minutes are split equally between the two parties giving them each **only 22 minutes** to present all of the evidence that each of them may have on all of these subjects and to refute the evidence presented by the other party. The time is strictly kept. As you can imagine, in any case where there are substantial issues to address it is impossible to provide the court with all of the relevant and material information within those 22 minutes.

### **Family Law Trials**

The situation is no less difficult when it comes to trials. At trial evidence is presented on such issues as the value of a business or professional practice, value of real property and other significant assets owned by the parties, their earnings and earning capacity, the anticipated costs of living separate and apart, whether a person should be made to account for certain acts or misdeeds and what types of provisions need to be made to serve the best interests of the children. At trial the parties are seeking final orders from the court. These orders will include the ultimate valuation and disposition of all of the community assets, allocation of the responsibility to pay each of the outstanding community debts, recognition of sole and separate property claims, spousal maintenance, legal decision making with respect to the children, parenting time and child support. These are often life-altering decisions yet judges typically allocate no more than three hours for a trial that could encompass all of these issues. Again the time is divided equally between the parties

and strictly kept. Many judges have chess clocks behind the bench and the lawyers or the parties are allocated no more than 90 minutes to present all of their evidence, question and cross-examine all of the witnesses and make all of their arguments. Even when there are complicated financial issues or investments, a closely held business or complex custody issues we have to battle with judges to receive any more than 3 hours of court time for trial and more often than not requests for more time are rejected. Ninety short minutes of time when the decision can and will have a life-long impact on parents and their children.

### **Opt Out**

As you can now well appreciate, because of the caseload in the Family Law Division and the lack of time made available, in complex and multi-faceted cases, we find that often our clients’ needs can best be met if we are able to help them “opt out” of the judicial system. Often opting out is the strategy that best suits our goal which is to maximize the probability that each of our clients obtains a favorable outcome in his or her family law proceeding given their individual and particular circumstances.

There are a number of ways we help our clients navigate their family law matters outside the judicial litigation process.

These include:

- Negotiated settlements with or without the assistance of a third party.
- Mediation.
- Arbitration.
- Formal settlement conference.
- Appointment of a family law master.

Each of these alternative dispute resolution methods is different. Some can only be engaged in if the opposing party and his or her counsel agree but some can be ordered by the court over the objection of a party thereby compelling the other party to participate in a process outside the system. Each deserves thoughtful consideration in the context of your unique situation before a course of action is taken. Each of these alternatives will be discussed in more detail in future articles.

1. Referred to as the “Family Law Division” throughout this article.  
2. See the Fiscal Year 2013 Annual Report of the Judicial Branch of Arizona in Maricopa County. Citations referring to 2013 are for the Fiscal Year of 2013 which runs from July 1, 2012 through June 30, 2013.