

Things You Should Know About

Legal Decision-Making and Parenting Time



This booklet is designed to give you general information about legal decision-making and parenting time in domestic relations cases and to let you know what you can expect when the court is involved in the process.

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Introduction

This booklet is intended to provide general information about legal decision-making and parenting time. It is not a complete nor authoritative review of these subjects and reflects the laws of the state of Arizona only as of the date of its publication. The booklet is not intended to be a guide to obtaining or changing legal decision-making or parenting time. Questions about specific situations should be discussed with an attorney.

Although legal decision-making can be granted by the court to a person other than a parent, the following questions and answers assume parents are seeking legal decision-making or parenting time. State laws governing legal decision-making and parenting time are found in Arizona Revised Statutes, Title 25, Chapter 4.

What is legal decision-making and parenting time?

When parents separate or divorce, care for the children must continue. If the parents cannot agree on a plan for raising the children, the court will order a plan or decide matters concerning their health and welfare. Often this includes making decisions about how much time the child will spend with each parent and how parents will share decisions regarding

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the child's education, health care, religious training and personal care. In some situations, unmarried parents, relatives or other persons also may ask the court for legal decision-making, parenting time, or non-parental visitation. In each case, the court's decision is based on the child's best interests.

Questions & Answers

Q. What is legal decision-making?

A. Legal decision-making is a legal term referring to the right and responsibility of a person to make all nonemergency legal decisions for a child including those regarding education, health care, religious training and personal care decisions. A parent may be awarded sole or joint legal decision-making. In determining the level of decision-making that is in the child's best interests, the court considers certain factors. (See factors in Arizona Revised Statutes ([A.R.S. §§ 25-403\(A\)](#) and [25-403.01 \(B\)](#)). The law does not prefer sole legal decision-making over joint or vice versa. Nor is it permissible for a judge to consider the sex of a parent in determining legal decision-making.

Q. What is parenting time?

A. Parenting time is the schedule of time during which each parent has access to a child at specified times. Each parent during their scheduled parenting time is responsible for providing the child with food, clothing and shelter and may make routine decisions concerning the child's care.

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Q. When do legal decision-making and parenting time issues arise?

A. Most often, disputes about legal decision-making and parenting time arise when married parents ask the court for a dissolution of the marriage (divorce) or a legal separation. However, legal decision-making issues may also arise between parents who have never been married or who no longer live together. Legal decision-making issues may also arise after the dissolution of marriage is final. In these situations, parents sometimes disagree about who makes decisions affecting the child's welfare, where the child resides, or how much parenting time a parent will have with the child.

Q. Who decides legal decision-making and parenting time?

A. Parents may agree between themselves about legal decision-making and parenting time. However, if the parents cannot agree and if the Arizona legal system becomes involved (for example, when a parent asks the court for a dissolution), only the superior court judge may decide these issues.

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Q. What is meant by sole legal decision-making?

A. This means that the court orders one parent to have the legal right and responsibility to make major decisions regarding the child's care or welfare. Although both parents may discuss these matters, the parent designated by the court as the sole legal decision-maker has authority to make final decisions in the event the parents do not agree. An order for sole legal decision-making does not allow the parent designated as the sole legal decision-maker to unilaterally change a court-ordered parenting time plan.

Q. What is meant by joint legal decision-making?

A. This means that both parents share decision-making and neither parent's rights nor responsibilities are superior except with respect to specified decisions as set forth by the court or the parents in the final judgment or order.

Q. How does joint legal decision-making work?

A. When the court awards joint legal decision-

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making, each of the parent's has the same rights and responsibilities to make decisions about the child's care and welfare and neither parent's rights are superior to the other parent's. However, in the best interest of the child, the court may direct that certain decisions be made by only one parent, even when joint legal custody is awarded.

Q. If parents have joint legal decision-making, do both parents enjoy equal amounts of parenting time?

A. Not necessarily. The court may order joint legal decision-making without ordering equal parenting time. (See [A.R.S. § 25-403.02\(E\)](#)).

Q. What is the procedure for getting a legal decision-making order?

A. The court may grant a legal decision-making order only in certain kinds of cases. Most often, legal decision-making is determined when the parents are seeking a legal separation or dissolution of marriage, or when parents are asking the court to change (or modify) a legal decision-making order made in an earlier separation or dissolution of marriage

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case. Legal decision-making also may be ordered when one parent starts a court case to decide paternity (or maternity) of a child.

When a parent starts a court case for legal separation or dissolution of marriage and the parents cannot agree about legal decision-making with regard to the child, it automatically becomes an issue for the court to decide. These court decisions are made in temporary order hearings and in final trial if the parties are unable to reach an agreement. After a decree of legal separation or dissolution of marriage has been granted, the court still has authority to change (or modify) an earlier legal decision-making order.

Q. How can a court's legal decision-making order be changed (or modified)?

A. Either parent may request in writing that the court modify a legal decision-making order. To change an existing order it must be shown that the best interests of the child are not currently being served. The request is filed with the Clerk of the Superior Court and a fee for filing is charged. However, there are limitations on requesting a modification. For exam-

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ple, a request may not be filed for one year from the date of the earlier order, unless there are special circumstances seriously endangering the child's physical, mental, emotional or moral health. If joint legal decision-making has been ordered, a modification may be requested at any time if there is evidence that domestic violence, spousal abuse or child abuse has occurred since the date the last order was granted. However, a parent must wait six months before seeking a modification if the reason for the request is that one parent has failed to obey provisions of the court's order in a joint legal decision-making situation.

Q. How does the court make its decision regarding legal decision-making?

A. If there is a dispute about legal decision-making, the court sometimes refers the parents to mediation services. This process gives the parents an opportunity to reach an agreement regarding legal decision-making and related issues. However, if the parents are unable to come to an agreement, the court will decide for them. Sometimes the court seeks professional advice from outside experts who

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evaluate the family situation or offer an opinion about legal decision-making. In some situations, the court also may order an investigation by a social service or other agency. In every case, the court must decide legal decision-making based on a determination of the best interests of the child.

Q. What if the parents agree how legal decision-making should be decided?

A. Usually it is best if parents can agree on decisions about raising children after a legal separation or dissolution of marriage. The court usually accepts the parents' mutual decision. However, the court's decision about legal decision-making must be made in the best interests of the child. After review of the agreement's terms, the duty imposed on the court by law may require that the court not accept the parents' agreement.

Q. What does the court consider when deciding what is in the child's best interests in legal decision-making disputes?

A. State law provides guidance to the courts by listing factors that the court should consider.

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These include such things as the past, present and potential future relationship between the parent and child; how the child interacts with each parent, other children in the family, and any other person who may significantly affect the child's best interest; the child's adjustment to home, school and community; the wishes of the child as to legal decision-making and parenting time; the mental and physical health of all individuals involved; which parent is more likely to allow for frequent, meaningful and continuing contact between the child and the other parent; whether one parent intentionally misled the court to cause an unnecessary delay, to increase the cost of litigation or to persuade the court to give a legal decision-making or parenting time preference to that parent; whether there has been domestic violence or child abuse; whether coercion or duress was applied in coming to an agreement regarding legal decision-making or parenting time; whether the parents participated in the required parent education course; and whether either parent has been convicted of falsely reporting child abuse or neglect. (See [A.R.S. § 25-403](#)).

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Q. What if the parents want to have joint legal decision-making?

A. If the parents request joint legal decision-making, they must submit to the court a written parenting plan indicating how they will cooperate to raise and care for the child. The court may order joint legal decision-making without ordering equal parenting time. The court may order joint legal decision-making even if one parent objects, but the court's decision must be made in the best interests of the child.

Q. When legal decision-making is decided, how does a parent obtain child support?

A. The law provides that when the court grants a legal decision-making order, it also must decide what amount of child support should be paid, by each parent, under the Arizona Child Support Guidelines. Joint legal decision-making does not mean that either parent is no longer responsible to provide for the support of the child.

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Q. Can a person other than a parent have legal decision-making?

A. Yes. The law provides that a person who stands *in loco parentis* to a child may ask the court for legal decision-making or visitation. To be *in loco parentis* a person must have been treated as a parent by the child and have formed a meaningful parental relationship with the child for a substantial period of time. There are other requirements that must be met before a request may be made to the court. One of the child's parents must be deceased, the child's legal parents must be unmarried, or a court case for divorce or legal separation between the legal parents is pending. (See [A.R.S. § 25-409](#)).

Q. How can a parent obtain school, medical, and other records of their child after dissolution of marriage?

A. No matter which form of legal decision-making is ordered, each parent is entitled to have equal access to prescription medication, documents and other information about the child unless access would endanger seriously the child's or a parent's physical, mental,

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moral or emotional health. (See [A.R.S. § 25-403.06](#) and [§ 25-408\(I\)](#)).

Q. When may a parent with legal decision-making move from Arizona with the child?

A. If both parents are entitled to joint legal decision-making or unsupervised parenting time and both parents live in Arizona, the parent desiring to move with the child must give 60 days' written notice to the other parent before the child may be moved to a residence more than 100 miles from the previous residence or from the state. The nonmoving parent may petition the court for a hearing to stop the move of the child within 30 days after notice is made.

Q. What if my job requires an immediate transfer in less than 60 days?

A. A parent who is required to relocate in less than 60 days and is a parent with sole or joint legal decision-making and primary residence of a child may temporarily move with the child after written notice has been given to the other parent. The move will be permitted on

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a temporary basis until a final agreement or order is formed. (See [A.R.S. § 25-408](#)).

Q. Why is parenting time important?

A. A child deserves to have a good relationship with both parents. When parents do not live together, the child should have the opportunity to spend time with each parent.

Q. What parenting time rights does a parent have?

A. State law entitles a parent to reasonable rights of parenting time to ensure that a child has frequent and continuing contact with the parent. However, parenting time can be limited, or even denied, if the child's physical, mental, moral or emotional health would be seriously endangered by parenting time with a parent.

Q. What amount of parenting time is right?

A. That depends on the child's age and stage of development. For example, it may not be appropriate to have lengthy periods of parenting time with a newborn child, although more frequent shorter visits may be appropriate. Some counties (Coconino, Maricopa, Mohave, Pima,

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Pinal and Yavapai) have established guidelines to help parents and the courts decide how much parenting time is important to the child. The Arizona Supreme Court has also published [Planning for Parenting Time: Arizona's Guide for Parents Living Apart](#) to assist parents in establishing age-related parenting time schedules. However, it is important to remember that guidelines do not apply to all family situations or to all children. If the parents cannot agree on a schedule, the court decides parenting time on a case-by-case basis.

Q. What is reasonable parenting time?

A. The term "reasonable parenting time" means time spent with a child that is average for most cases. Although the term has sometimes been used in parenting plans and even in court orders, parenting time decisions depend on the circumstances of each family, considering the child's age and development. When parenting time is described only as "reasonable," it is difficult to predict when or for how long parenting time periods should occur.

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When preparing an agreement or parenting plan, it is recommended that parents specifically decide when and for how long parenting time periods will be, including how to handle and allocate special occasions like vacations, school breaks, birthdays and holidays so that both parents are considered. Guidelines available in some counties and the Supreme Court's [model parenting time plans](#) may be useful to parents in making these decisions. The parenting time order should be written specifically enough to enable the court to enforce the order if the order is not followed and one parent files a request for enforcement.

- Q. Are parenting time and legal decision-making related?**
- A.** Yes. Arizona law provides that in most cases a parent not granted legal decision-making with regard to the child is entitled to reasonable parenting time to ensure that the child has substantial, frequent, meaningful and continuing contact with that parent. As a part of its legal decision-making order, the court also will decide what amount of parenting time is appropriate. Even if parents share joint legal

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decision-making, the child may live primarily with one parent or share residential time with both parents, making it important to decide what parenting time schedule should be ordered.

Q. Do I have to start a court case to have parenting time?

A. Parents are free to agree on the best parenting time plan for their child. If parents cannot agree, or if their agreement is not working, court action may be necessary. Remember, only the superior court can decide parenting time matters and issue an order that can be enforced if disagreements arise or if one parent does not honor the parenting time schedule.

Q. How do I obtain a legal order for parenting time?

A. As with legal decision-making, the court may grant a parenting time order only in certain kinds of cases. Most frequently, parenting time is determined when the parents are seeking a legal separation or dissolution of marriage, or when parents are asking the court to

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change a parenting time decision that was made in an earlier separation or dissolution case. Parenting time may also be ordered when one parent starts a court case to decide paternity (or maternity) of a child or after a voluntary acknowledgment of paternity.

When a parent starts a court case for legal separation or dissolution, legal decision-making and parenting time automatically become issues for the court to decide if the parents cannot agree. After a decree of legal separation or dissolution has been granted, the court still has authority to change (modify) an earlier parenting time order. Either parent may request in writing that the court decide what parenting time should be. The request is filed with the clerk of the superior court and a filing fee is charged.

- Q. How does the court make its decision about parenting time?**
- A.** If there is a dispute about parenting time, the court sometimes refers the parents to court mediation services. This process gives the parents an opportunity to reach an agreement regarding parenting time and related issues.

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However, if the parties are unable to agree on parenting time, the court must decide for them. Sometimes the court seeks professional advice to evaluate the family situation or offer an opinion about parenting time. When making its decision, the court will consider many factors, for example, the age and health of the child, the time each parent has available from work or other obligations, the distance between the parents' homes, the child's school schedule and the suitability of living conditions in each parent's home.

Q. What if a parent disobeys a court order for parenting time?

A. If one parent violates a parenting time order, the other parent cannot deny parenting time, stop paying support, or take other self-help action to punish the violating parent (to do so also would violate the court order.) Instead, the court should be asked for help. To do this, a parent must file a written request for enforcement with the clerk of the superior court and pay a filing fee. A hearing before the court may be necessary if the matter cannot be resolved.

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Q. What can the court do if a parenting time order is disobeyed?

A. When a parent files a request for help in enforcing a parenting time order, state law requires the court to take quick action. There are several remedies the court can use to deal with the violating parent. Some of these remedies may include ordering parenting time to make up for missed sessions, ordering the violating parent to attend education classes or counseling, and finding the violating parent in contempt of court and ordering monetary fines.

Q. Can a person other than a parent have parenting time?

A. Yes. In certain circumstances, the law provides that a person who stands *in loco parentis* to a child may ask the court for visitation. To be *in loco parentis* a person must have been treated as a parent by the child and have formed a meaningful parental relationship with the child for a substantial period of time. There are other requirements that must be met before this request may be made to the court. Arizona law also permits grandparents and

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great-grandparents to have visitation rights if it is in the best interests of the child. In order to request visitation rights by a grandparent or great-grandparent, the child's parents must have been divorced for at least three months, one parent must be deceased or missing for three months, or the child must have been born out of wedlock.

Q. What is supervised parenting time?

A. Sometimes, to prevent harm to a child's health or emotional development, it is necessary for the court to order that a social service agency or a mental health professional be involved with a family to be sure parenting time (and even legal decision-making) orders are followed. In this situation, the court may order the agency or another party to supervise or oversee the parenting time periods. In some cases, the exchange of the child is supervised by a third party to diminish the conflict between the parents to which the child would be exposed without supervised exchanges.

Q. What if a court decision regarding legal decision-making, child support, or par-

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enting time needs to be made before the end of the case if the parents cannot agree?

A. If the parents cannot agree in connection with any or all of these issues at the beginning of the case, one or both parents may file a request with the court for temporary orders. Temporary orders are short-term decisions made by the judge, which remain in effect until a final court order is entered in the case. The Preliminary Injunction is the first temporary order issued in a suit for dissolution. In addition, either party may file a petition for temporary orders for child-related issues such as legal decision-making, child support and parenting time. If no agreement is reached after proper request is made, a hearing must be requested and held before the court, including witness testimony and presentation of evidence.

Q. Can legal decision-making and parenting time be decided for parents who are not married?

A. Parents are free to make decisions about legal decision-making or parenting time on their

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own. When parents are unmarried and no order has been entered to establish parental rights, the biological father has no legal right to either legal decision-making or parenting time until paternity is established. He also has no legal obligation to pay child support to the mother until an order of paternity is entered. In Arizona, paternity can be legally established through the Superior Court, the Department of Health Services or the Department of Economic Security. (See the Supreme Court booklet in this series titled *Things You Should Know About Establishing Paternity for Your Child*.)

- Q. After legal paternity has been established, how are legal decision-making and parenting time decided?**
- A.** As with other cases, legal decision-making and parenting time can only be legally decided by the superior court. The court must decide legal decision-making and parenting time based on the best interests of the child. If a court case to establish paternity has been started in the superior court, either parent may ask the court to decide legal decision-

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making and parenting time. If paternity has been established by voluntary process through the court, the Arizona Department of Health Services, or the Department of Economic Security's hospital paternity program, one of the parents must file a specific request with the court to have legal decision-making or parenting time legally decided.

Q. If the parents are not married, should the mother have legal decision-making?

A. Until legal paternity is decided, the law presumes that legal decision-making with regard to the child should be with the mother. However, when a court legally establishes paternity the law directs that, unless the court orders otherwise, legal decision-making with regard to the child should be with the parent with whom the child has lived for most of the six-month period before paternity is decided. Of course, when the court decides legal decision-making or parenting time, the decision is always based on the best interests of the child. Accordingly, the court may order that either or both parents have legal decision-making if it is in the child's best interests.

Parent Education Program

In 1996, the Arizona State Legislature established a Domestic Relations Education on Children's Issues Program, now offered in each Arizona county. This program sometimes is referred to as the parent education program or parent information program. Although the programs may differ somewhat in each county or even within counties, each is designed to offer education to parents about the impact that divorce, the restructuring of families and judicial involvement have on children. The Arizona Supreme Court sets minimum standards for these programs, including the topics to be covered and qualifications of course presenters.

Parents who have a child in common who is less than eighteen years old must attend the program when involved in a court case for dissolution of marriage or for legal separation. Unmarried parents involved in a court case to establish paternity or maternity also must attend the program if the court has been asked to decide legal decision-making, parenting time or child support. Parents of minor children may also be ordered to attend the program if, after determining paternity or obtaining a dissolution of marriage or a legal separation, disputes regarding legal decision-making, parenting time or

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child support are presented to the court. Parents who fail to attend the program as ordered may be refused any specific request for court action, held in contempt of court or have other penalties imposed.

The program lasts up to four hours in length and a fee may be charged to each participant.

Words & Definitions

Child Support Guidelines – Means the child support guidelines that are adopted by the State Supreme Court pursuant to 42 United States Code §§ 651 through 669B. The guidelines provide instruction for evaluating each parent's income and child-related expenses in order for each parent to contribute, by court order, their proportionate share of the total child support amount.

Primary caregiver – The court may specify one parent as the primary caretaker of the child and one home as the primary home of the child for the purposes of defining eligibility for public assistance. If the court makes this finding it does not diminish the rights of either parent and does not create a presumption for or against either parent in a proceeding for the modification of a legal decision-making or parenting time order.

Legal decision-making – The legal right and responsibility to make all nonemergency legal decisions for a child including those regarding education, health care, religious training and personal care decisions. For the purposes of interpreting or applying any international treaty, federal law, a uniform code or the statutes of other jurisdictions of

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the United States, legal decision-making means legal custody.

In loco parentis—A legal term referring to a person who, although not a legal or biological parent of the child, has been treated as a parent by the child and established a meaningful parental relationship over a substantial period of time.

Joint legal decision-making—Means both parents share decision-making and neither parent's rights or responsibilities are superior except with respect to specified decisions as set forth by the court or the parents in the final judgment or order.

Mediation—A process by which persons attempt to reach mutually acceptable agreements, usually with the assistance of a trained professional who guides the discussion process.

Parent Education Program—Formally called the Domestic Relations Education on Children's Issues Program, this is an educational program designed to help parents understand the impact that divorce, the restructuring of families, and judicial involvement have on children.

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Parenting plan—The key to successful co-parenting is a written parenting plan that states the agreements parents reach about legal decision-making, the sharing of rights and privileges, and the schedule for parenting time. In Arizona, joint legal decision-making requires a written parenting plan that must be reviewed periodically and provides a way to resolve conflicts about legal decision-making and parenting time. The parenting plan also must include a statement that joint legal decision-making does not necessarily mean equal parenting time.

Parenting time—Means the schedule of time during which each parent has access to a child at specified times. Each parent during their scheduled parenting time is responsible for providing the child with food, clothing and shelter and may make routine decisions concerning the child's care.

Sole legal decision-making—Means one parent has the legal right and responsibility to make major decisions for a child.

Visitation—Means a schedule of time that occurs with a child by someone other than a legal parent.

Locations for Obtaining Forms

Apache County
70 West 3rd South
St. Johns, AZ 85936
(928) 337-7550
<http://www.apacheclerk.net>

Cochise County
100 Quality Hill
P.O. Box CK
Bisbee, AZ 85603
(520) 432-8570
http://cochise.az.gov/cochise_clerk_court.aspx

Coconino County
200 North San Francisco
Flagstaff, AZ 86001
(928) 679-7600
<http://www.coconino.az.gov/index.aspx?NID=132>

Gila County
1400 East Ash Street
Globe, AZ 85501
(928) 425-3231
<http://www.supreme.state.az.us/gilasc/clerk/clerk.html>

Graham County
800 Main Street
Safford, AZ 85546
(928) 428-3100
http://www.graham.az.gov/Grahm_CMS/Clerk.aspx?id=420

Locations for Obtaining Forms

Greenlee County

223 Fifth Street
Clifton, AZ 85533
(928) 865-4242
<http://www.co.greenlee.az.us/Courts/clerkhome.aspx>

La Paz County

1316 Kofa Avenue, Suite 607
Parker, AZ 85344
(928) 669-6131
http://www.co.la-paz.az.us/Main_Pages/Dept_Courts/mainClerk.htm

Maricopa County

601 W. Jackson
Phoenix, AZ 85003
(602) 506-3360
<http://www.clerkofcourt.maricopa.gov/>

Northeast Regional Court Center

18280 N. 40th Street, Phoenix, AZ 85032
(602) 372-7601

Northwest Regional Court Center

14264 W. Tierra Buena Lane
Surprise, AZ 85374
(602) 372-9400

Southeast Regional Public Service Facility

222 E. Javelina Ave. Mesa, AZ 85210
(602) 506-2020

Locations for Obtaining Forms

Mohave County

401 East Spring Street

Kingman, AZ 86402

(928) 753-0713

<http://www.mohavecourts.com/clerk/homepage.htm>

Navajo County

100 East Code Talkers Drive

South Highway 77

Holbrook, AZ 86025

(928) 524-4188

<http://www.navajocountyaz.gov/superiorcourt/>

Pima County

110 West Congress

Tucson, AZ 85701

(520) 740-3200

<http://www.agave.cosc.pima.gov/>

Pinal County

971 Jason Lopez Circle

Building A, Highway 79

Florence, AZ 85232

(520) 866-5300

<http://www.pinalcountyaz.gov/Departments/JudicialBranch/ClerkoftheSuperiorCourt/Pages/Home.aspx>

Locations for Obtaining Forms

Santa Cruz County

Santa Cruz County Complex

2150 North Congress Drive

Nogales, AZ 85621

(520) 375-7700

<http://www.co.santa-cruz/az.us/clerk/index.html>

Yavapai County

2840 North Commonwealth Drive

Camp Verde, AZ 86322

(928) 567-7741

<http://courts.yavapai.us/clerk/>

Yuma County

250 W. 2nd Street

Yuma, AZ 85364

(928) 817-4222

[http://www.yumacountyaz.gov/index.aspx?
page=125](http://www.yumacountyaz.gov/index.aspx?page=125)



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