December 2018

December 4, 2018 | Topics: court news, Eighth Judicial District Court, Family Law

Check out the "Family Law" issue of COMMUNIQUÉ (December 2018), the official publication of the Clark County Bar Association online today. This issue features content written by members of Nevada's legal community, including the following articles:

- "Family Court Judicial Process" by Carli L. Sansone, Esq.
- "School choice issues in custody litigation (and what factors the court can consider when parents cannot agree on a child's school)" by Jason P. Stoffel, Esq.
- "Registration of Foreign Judgments at Family Court" by Judge Mathew Harter
- "Nevada Appellate Court Summaries" Joe Tommasino, Esq.

In the print and PDF edition, readers can access announcements of bar activities and services as well as other practical content, including these featured pieces:

- Message from CCBA President: "Thank You and See You Around" by John P. Aldrich, Esq.
- View from the Bench: "New Specialty Courts Added, New Grants Awarded to Benefit Families and Community" by Chief Judge Linda Marie Bell
- Departments: Volunteer Highlights, Member Moves, New Members, Court Changes, The Marketplace

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Family Court Judicial Process

By Carli L. Sansone, Esq.

Carli L. Sansone

A common frustration experienced by family law attorneys who practice in the Eighth Judicial District Court, Clark County, Nevada is that many of the departments take too long to return submitted orders and decrees. The likely reason for the frustration by attorneys and legal staff is that many of them do not know the process that takes place behind the scenes of the judicial system. If attorneys and legal staff are better informed on the judicial process that occurs after they submit an order or decree to a department then they would likely understand why the court sometimes does not return a proposed order or decree as quickly as the attorney might prefer.

The information provided below is a general breakdown of the process that takes place after an attorney or runner places a proposed order in a department's box, to hopefully assist attorneys and staff in understanding the process that occurs afterwards.

Submission of a Proposed Order and Subsequent Process:

1. An attorney or runner places a proposed order into a department's box.
2. The judicial staff members retrieve all documents from the department's box regularly throughout the day.
3. Whoever retrieves the order places it into the JEA's in-box.
4. The JEA sorts through his or her in-box from top to bottom. The JEA logs the order in to the department, which places a time-stamped notation in Odyssey, the court's system.
5. The JEA places the order in the law clerk's or the court reporter's in-box. Orders from hearings go to the court reporter, while all other orders and decrees go to the law clerk.
6. The law clerk and court reporter sort through their respective in-boxes from top to bottom. The law clerk reviews orders to confirm that any prerequisites are satisfied and that the orders include the required signatures. The court reporter reviews orders from hearings for content and accuracy. If the order passes the review by the law clerk or court reporter, they initial the order and transfer it to the judge's in-box.
7. The judge sorts through his or her in-box from top to bottom. The judge completes the final review of all orders and decrees, sometimes returning the order or decree to the law clerk or court reporter if the judge has a question.
8. After the judge completes the final review of the order, the judge returns the order, whether approved or denied, to the JEA.
9. The JEA returns the order, whether approved or denied, to the law firm. Before an order leaves the department, the JEA logs the order out of the department, which places another time-stamped notation in Odyssey.

The process that takes place behind the scenes when someone submits a proposed order to the court is much more extensive than most people realize. Each department has an average of approximately 500 open cases at any given time, all of which require submission of an order or decree at some point. On any given day, a department might receive 20-50 proposed orders and decrees. Departments receive other documents as well, that must be sorted through.

In addition to processing proposed orders and decrees, the judicial staff have many other duties to complete each day. JEAs handle all of the day-to-day administrative activities of the department. They essentially act as a middle-person between the judge and the rest of the world. Law clerks brief cases for calendar and trial, which can include anywhere between 30 and 65 cases depending on the week. Additionally, many law clerks assist the judge with research and decisions, and are sometimes required to be present in court. Court reporters must be present in court every time court is in session. They call cases, go on and off the record, keep detailed notes about what occurs in court, ensure all of the minutes are correct, and answer case history questions that arise throughout the day while court is in session. In addition to all of these duties, each judicial position receives multiple phone calls from various pro se litigants, attorneys, and legal staff on an average day. There are many other responsibilities and duties that are not listed herein.

With all of this said, all of the departments do their best to process proposed orders and decrees as quickly as possible. However, there are times when the process can take longer than usual. When this occurs, attorneys should balance patience with follow-up, and try to utilize the above listed procedure to help determine where the proposed order or decree is at in the judicial process.

Carli L. Sansone *received her J.D. from the William S. Boyd School of Law and her B.A. in psychology from the University of Nevada, Las Vegas. Carli currently works as an associate attorney at vegas east attorneys. Immediately before joining vegas east attorneys, Carli served as law clerk to the Honorable Vincent Ochoa, Judge in the Eighth Judicial District Court, Family Division.*

School choice issues in custody litigation (and what factors the court can consider when parents cannot agree on a child's school)

By Jason P. Stoffel, Esq.

Jason P. Stoffel

Too often as a family law attorney, the practitioner is confronted with the issue of litigating what school the child should be enrolled in over the objection of the other parent. Until recently, this just fell in under the "best interest of the child" umbrella under NRS 125C.0035 (initial determination) or NRS 125C.0045 (modification of an order using the "best interest" test). Parents have a fundamental right to make decisions affecting their children as to their "care, custody, and control over their children." *Troxel v. Granville*, 530 U.S. 57 (2000).

The Supreme Court of Nevada issued an excellent opinion on December 26, 2017 in the *Arcella* opinion. *Arcella v. Arcella*, 407 P.3d 341, 133 Nev. Adv. Op. 104 (2017). The takeaway in that case is for the first time in Nevada history, there are now a series of factors that the court should consider, among any other relevant fact, to assist the district court judge resolving the school choice dispute. Listed on page 8 of this advanced opinion:

1. The wishes of the child, to the extent that the child is of sufficient age and capacity to form an intelligent preference;
2. The child's educational needs and each school's ability to meet them;
3. The curriculum, method of teaching, and quality of instruction at each school;
4. The child's past scholastic achievement and predicted performance at each school;
5. The child's medical needs and each school's ability to meet them;
6. The child's extracurricular interests and each school's ability to satisfy them;
7. Whether leaving the child's current school would disrupt the child's academic progress;
8. The child's ability to adapt to an unfamiliar environment;
9. The length of the commute to each school and other logistical concerns; and
10. Whether enrolling the child at a school is likely to alienate the child from a parent.

The analysis is very fact specific and the astute practitioner or litigant should do a very detailed Pre-Trial Memorandum with proposed findings for the court to follow along at the time set for an Evidentiary Hearing. The point is to make it as easy as possible for the district court judge in rendering the best decision possible.

Parents are on equal footing as school choice is a Joint Legal Custody decision. *See Rivero v. Rivero*, 125 Nev. 410, 216 P.3d 213 (2009). The specific statute as to having the court make a decision as to the child's *education* is in NRS 125C.0045(1)(a).

The one issue that was not resolved in the *Arcella* case is when the school choice options came down to public v. private/religious schools. While the *Arcella* decision was reversed and remanded, there are First Amendment Establishment Clause issues that have to be fully briefed. A court cannot just disfavor a school option just because it is a religious school as that would violate the concept of government neutrality between religion and nonreligion. *Epperson v. Arkansas*, 393 U.S. 97 (1968).

Exhibits such as student-teacher ratio, curriculum, distance of commute between the two parents, etc. are helpful to the court when resolving the dispute. These facts can be clearly documented with evidentiary exhibits using a variety of information readily available online. There are many private school rating websites available that end in ".com" that do not have the evidentiary foundation and reliability as the government websites ending in ".org" or ".gov."

Hearsay objections with a valid hearsay exception can come into play here so trial counsel must be aware of the best way to put on their case and get the necessary exhibits into evidence. Although an Evidentiary Hearing is never guaranteed, by doing the proper analysis to show what information will be presented at trial in support of the school choice request, by way of the motion, will get the attorney or litigant a chance to put on their case so long as there is "adequate cause" for the Evidentiary Hearing that is demonstrated in the moving papers. *See Rooney v. Rooney*, 109 Nev. 540, 853 P.2d 123 (1993).

In my experience, what some cases come down to is the stability of a parent's residence. That is, does a parent rent or own their own home? A renter might have the ability to move closer to the other parent's residence at the end of their lease so that would eliminate the school choice issue. A person that owns their home and can demonstrate their intent to remain in the home (or the home in the area was purchased primarily based on the nearby schools) are strong reasons and the court should not ignore these facts.

Unfortunately, some parents are stuck on "winning" that even though they might be moving or have the ability to move to an area zoned for better schools, they will want to choose any school but the other parent's school. The level of conflict will be readily shown at any trial and the court will

assess the motivation of a parent rather quickly since sometimes parents focus on what is in their *own* best interests versus what is in the *child's* best interests.

A court still has to do the "best interest" analysis and resolve disputes between parents as the child's health, education, and religious upbringing. Mack v. Ashlock, 112 Nev. 1062, 921 P.2d 1258 (1996). To say it another way, sometimes the best available school is the religious school if that school is in the child best interest. The Arcella opinion was clear that the Court "must order a child to attend the religious school if attendance at that school accords with the child's best interests." *See Id. at 5*. The word "*must*" was even italicized in the opinion.

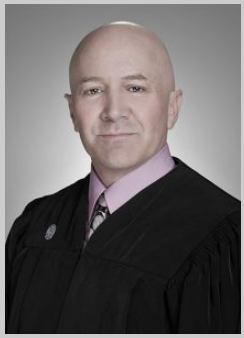
The "best" school is not always the highest ranked school, the private school, or the most expensive school. A judge should really "get to the know" the child based on the pleadings and the testimony of the parties. Only then, will the court have necessary information to make a proper school choice determination consistent with Nevada law and make the necessary best interest findings to support a custody decision such as school selection.

The takeaway from this article is to add more tools in the practitioner's legal tool chest when being confronted with a school choice issue. Every case is unique but I know personally I have litigated four (4) of them since the *Arcella* opinion was rendered. This is where staying abreast of legal topics and trends is imperative to doing the best we can for our clients.

Jason Stoffel, Esq. is one of the partners of Roberts Stoffel Family Law Group in Las Vegas. His area of practice for over 14 years has been in Family Law. He will proudly serve the Clark County Bar Association as the president of the organization in 2019.

Registration of Foreign Judgments at Family Court

By Judge Mathew Harter



Judge Mathew Harter

Under NRCP 54(a), "a 'Judgment' as used in these rules includes a decree and any order from which an appeal lies." Thus, a final order. "It is irrelevant whether the order is the result of a stipulated agreement between the parties that is later judicially approved or it is achieved through litigation. Instead, the relevant inquiry is whether the order fully resolved the issues between the parties." *Rennels v. Rennels*, 257 P.3d 396, 400 (2011). Yet, many attorneys request subsequent orders that restate what has already been previously adjudicated, with the justification being they want it as a reminder to an allegedly non-compliant party that the existing judgment is still in effect. However, "superfluous or duplicative orders and judgments—those filed after an appealable order has been entered that do nothing more than repeat the contents of that order—are not appealable and, generally, should not be rendered." *Campos-Garcia v. Johnson*, 331 P.3d 890 (2014) (emphasis added).

If a party subsequently moves out-of-state after the final judgment is entered, it may become necessary to register it in different state for a variety of purposes, including collection of child support or an attorney's fees award, modifying child custody, etc. This article is limited in scope to the registration process; it does *not* address the issues of *judgment execution, judgment renewal*, or *contesting a foreign registration*.

It is first noted that a decree of divorce potentially has three separate and distinct aspects for registration purposes: (1) an award of monetary sums, governed by NRS 17.350-17.360, the Enforcement of Foreign Judgments (Uniform Act); (2) a child custody determination, governing by NRS 125A.465, from the Uniform Child Custody Jurisdiction and Enforcement Act; and (3) child support and/or spousal support, governed by NRS 130.602 and/or 130.611 from the Interstate Family Support Uniform Act. A Decree of Custody (non-married parents) typically would only contain custody and child support.

The requirements to register a foreign judgment depend on what aspect of the decree is being sought via the foreign registration. Many seem unaware that if more than one of the foregoing three aspects are being sought (monetary award, custody, and/or support), then separate registration processes must be satisfied in order to proceed onto the enforcement/modification stage(s). All three separate registration requirements can occur in the same case filing.

As the requirements in all three areas are *detailed*, the processes are set forth verbatim.

Monetary awards

Enforcement in a foreign jurisdiction for the collection of a monetary award (*e.g.*, equalization payment, attorney's fees, *etc.*) is set forth in NRS 17.350-17.360. This is the *easiest* of the three registration processes to complete. Under NRS 17.350, an exemplified copy of the foreign judgment must be filed with the clerk of the court. The following is also required:

> an affidavit setting forth the name and last known post office address of the judgment debtor and the judgment creditor. The affidavit must also include a statement that the foreign judgment is valid and enforceable, and the extent to which it has been satisfied. Promptly upon filing the foreign judgment and affidavit, the judgment creditor or someone on behalf of the judgment creditor shall mail notice of the filing of the judgment and affidavit, attaching a copy of each to the notice, to the judgment debtor and to the judgment debtor's attorney of record, if any, each at his or her last known address by certified mail, return receipt requested. The notice shall include the name and post office address of the judgment creditor and the judgment creditor's attorney, if any, in this state. The judgment creditor shall file with the clerk of the court an affidavit setting forth the date upon which the notice was mailed. No execution or other process for enforcement of a foreign judgment may issue until 30 days after the date of mailing the notice of filing.

NRS 17.360

Unfortunately, some believe once this easiest registration process is completed, that all portions of the foreign Decree of Divorce can then be enforced. This is incorrect. *Family support*— child and spousal covered in NRS 130.602— is specifically *excluded* in NRS 17.340(1).

Child custody determinations

Registration of a child custody determination from a foreign jurisdiction requires five steps:

> (1) A child custody determination issued by a court of another state may be registered in this state, with or without a simultaneous request for enforcement, by sending to a court of this state which is competent to hear custody matters: (a) A letter or other document requesting registration; (b) Two copies, including one certified copy, of the determination sought to be registered, and a statement under penalty of perjury that to the best of the knowledge and belief of the person seeking registration the order has not been modified; and (c)

> the name and address of the person seeking registration and any parent or person acting as a parent who has been awarded custody or visitation in the child custody determination sought to be registered.
> (2) On receipt of the documents required by subsection 1, the registering court shall cause the determination to be filed as a foreign judgment, together with one copy of any accompanying documents and information, regardless of their form.
> (3) **The registering court** (NOTE: this was amended in 2017 and *means assigned department*) shall provide the persons named pursuant to paragraph (c) of subsection 1 with an opportunity to contest the registration in accordance with this section.
> (4) The person seeking registration of a child custody determination pursuant to subsection 1 shall serve notice, by registered or certified mail, return receipt requested, upon each parent or person who has been awarded custody or visitation identified pursuant to paragraph (c) of subsection 1.
> (5) The notice required by subsection 4 must state that: (a) A registered determination is enforceable as of the date of the registration in the same manner as a determination issued by a court of this state; (b) A hearing to contest the validity of the registered determination must be requested within 20 days after service of notice; and (c) Failure to contest the registration will result in confirmation of the child custody determination and preclude further contest of that determination with respect to any matter that could have been asserted."

NRS 125A.465

Family support

This third area of registration is the *most complicated*. The first question to decide in this registration process is the intended purpose. If it is for enforcement, the registration process is set forth in NRS 130.602. If it is for the *modification of a child support order of another state* , then it is set forth in NRS 130.611. If it is for both, then *both* processes must be followed. I remind attorneys and *pro se* litigants alike that in this particular area, the tribunal under NRS 130.102 includes the Child Support Hearing Master. In a previous article, I noted this tribunal is cloaked with federal authority and has several avenues of enforcement that a district court does not have (e.g., suspending driver's license/passports and intercepting tax returns). Therefore, rather than focusing on losing potential attorney's fees, it typically makes the most sense to have the client simply turn the matter over to the District Attorney Family Support division ("DAFS").
Depending on what part of the foreign judgment (money awards, child custody and family support) is being sought to enforced/modified, *proper registration* is the initial, necessary step. Finally, just because the registration portion is completed correctly does not mean the modification/enforcement is ultimately guaranteed.

Judge Mathew Harter *is a NV native (Bonanza/UNLV). He received his J.D. cum laude in 1994 from W. Michigan University where he served on Law Review and at 2 indigent law clinics. He was a law clerk for Judge G. Hardcastle and then started a solo law practice in 1995 primarily in Family Law. He was elected to Dept. N in 2008 and then re-elected in 2014.*

*About COMMUNIQUÉ

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