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STATEMENT OF INTEREST

Amici curiae is a licensed attorney and psychologist who has provided case management services for more than ten years and has co-sponsored comprehensive case management training workshops five times since 2006. He is an advocate for children and families in many jurisdictions and roles. This case highlights serious constitutional challenges in protecting the best interests of children and assisting families experiencing high conflict. It will shape the future of domestic case management in Kansas.

STATEMENT OF THE ISSUES

Whether a case manager's recommendations must be reviewed *de novo* so a District judge considers all relevant evidence in determining the best interests of the child and whether the mother in this case was denied due process when the case management statutes, Kan. Stat. Ann. §§ 23-1001 *et seq.*, did not provide for an evidentiary hearing on her fundamental liberty interests before changing custody.

STANDARD OF APPELLATE REVIEW

Statutory interpretation is a question of law and the applicable standard of review is *de novo*. *See In re Marriage of Bradley*, 282 Kan. 1, 137 P.3d 1030 (2006).

ARGUMENT AND AUTHORITIES

I. A case manager's recommendation for a change or custody or residency should be reviewed under a *de novo* standard by the District judge, who *shall* consider all relevant evidence in determining a child's best interests.

A. *De novo* review, rather than an abuse of discretion standard, should apply to a case manager's recommendation to change custody or residency of a child because District judges must review all relevant factors in determining a child's best interests.

In *In re Marriage of Gordon-Hanks*, 27 Kan. App. 2d 987, 10 P.3d 42 (2000), an appellate court upheld a District judge's affirmation a case manager's recommendation for a change of residency of a minor child. The District court adopted the case manager's recommendations. The Kansas Court of Appeals interpreted the appeal to be a case of statutory interpretation and reviewed both the case manager's recommendation and the trial court decision under an abuse of discretion standard. *Id.* Mother received a hearing before a District judge who considered the "case manager's report and recommendation, the letter from Dr. Sweetland, as well as testimony adduced at the hearing [from both parents]." The case manager's recommendation was reviewed as if it were a judicial decision. The appellate court found that "the disagreeing party bears the burden of proving the case manager's recommendation to be erroneous or inappropriate." *Id.*

The abuse of discretion precedent of *Gordon-Hanks* should be replaced with a *de novo* standard when the case involves a change of custody or residency. When judicial rule precludes a District judge from hearing relevant evidence, the rule conflicts with the best interests guideline established by legislative and decisional law." *Hill v. Hill*, 228 Kan. 680, 620 P.2d 1114 (1980). Review of a case manager's recommendations must be *de novo* because courts consider all relevant factors in making best interests determinations. "In determining the issue of child custody, residency and parenting time, the court **shall** consider all relevant factors, including but not limited to" eleven listed factors. Kan. Stat. Ann. § 60-1610(a)(3)(B)(i)-(xi)[emphasis added]. District judges have ongoing jurisdiction to determine issues of custody, residency, and parenting time by considering what would serve the best interests of the child. Kan. Stat. Ann. § 60-1610(a)(3). *Simmons v. Simmons*, 223 Kan. 639, 642, 576 P.2d 589 (1978).

In high conflict cases where parents repetitively litigate over sometimes trivial issues, it might be tempting to review the case manager's recommendations under an abuse of discretion standard, as if the trial court were serving an appellate function. Contrast the "shall consider all relevant information" of legislative and decisional law with the task of an appellate court reviewing under an abuse of discretion standard:

> The interest of an appellate court is directed only to such evidence as supports the findings of the trial court [substitute: case manager], and not to that which might tend to establish contrary findings or a different result. An appellate court must accept the evidence which is most favorable to the prevailing party and where there is substantial competent evidence in the record to sustain a judgment--this court must sustain it rather than speculate as to what other dispositions the record might support.

Schreiner v. Schreiner, 217 Kan. 337, 340-41, 537 P.2d 165 (1975).

The best interests principle applied by the *Hill* Court applies to a case manager's recommendations. When a case manager's recommendation is reviewed under an abuse of discretion standard, a standard reserved for the review of District judges, the best interests of children and the liberty interests of parents are not adequately protected. The risk of error in a custody or residency decision decided in this way is unacceptably high.

B. Other support for de novo review from the Kansas Family Code: Comparisons to other expedited judicial processes

Additional support for *de novo* review of recommended changes in custody and residency of children can be found in the Kansas Family Code. The scope afforded a case manager exceeds the scope of issues that may be addressed by other non-consensual expedited judicial processes used in Kansas. Parents can be ordered to administrative hearing officers (AHO) or magistrate judges regarding their domestic disputes. Neither a hearing officer nor a magistrate judge, however, has the authority to change custody or

residency over the objection of a party. *See* Kan. Sup. Ct. R. 172 (regarding AHOs), Kan. Stat. Ann. §§ 20-164, 20-302b(a)(6) (regarding magistrate judges).

AHOs are legally trained and can accept an agreement between the parties as to custody or residency, but they cannot adjudicate a custody or residency dispute. An AHO may take testimony and evaluate evidence to establish or enforce a court order, accept voluntary acknowledgements of paternity and support liability, and modify visitation or parenting time. An AHO can also prepare written findings of fact and conclusions of law. Kan. Sup. Ct. R. 172. Magistrate judges may enforce orders granting visitation rights or parenting time and child support, but they have no jurisdiction over actions of divorce or custody of children. Kan. Stat. Ann. § 22-302b(a)(6).

With only one exception, appeals of decisions by AHOs or magistrate judges are conducted *de novo* by a District judge, *See* Kan. Stat. Ann. §§ 20-164, 20-302b. Kan. Sup. Ct. R. 172 (h) allows that, when the parties have had a hearing before an AHO and there is a transcript of the hearing available, the District judges "will review the transcript and, applying an abuse of discretion standard, may affirm, reverse, or modify the order. If a transcript is not available, the district judge will conduct a *de novo* proceeding."

C. *De novo* review of arbitrated best interests matters in other states

Other states have required *de novo* judicial review of consensually arbitrated parental agreements due to the state's *parens patriae* obligations to the best interests of children. This is true in several states that have arbitration statutes and in cases where parents consented to arbitration despite the absence of a statute. *See In re Popack*, 998 P.2d 464 (Colo. App. 2000); *Spencer v. Spencer*, 494 A.2d 1279 (D.C. 1985); *Kovacs v. Kovacs*, 633 A.2d 425 (Md. Ct. Spec. App. 1993); *Harvey v. Harvey*, 680 N.W.2d 835,

836 (Mich. 2004); Mo. Rev. Stat. § 435.405.5; *Miller v. Miller*, 620 A.2d 1161 (Pa. Super. Ct. 1993).

The Texas approach to arbitration most closely mirrors case management on standard of review, but parties may invoke a right to a hearing on a custody change. "If the parties agree to binding arbitration, the court shall render an order reflecting the arbitrator's award unless the court determines at a non-jury hearing that the award is not in the best interest of the child." Tex. Fam. Code Ann. § 153.0071(b). The review of an arbitrated award is "extraordinarily narrow." *Stieren v. McBroom*, 103 S.W.3d 602, 605 (Tex. Ct. App. 2003). Any party challenging the award must request the best interest hearing to invoke the right to a hearing and preserve a complaint. *In re C.A.K.*, 155 S.W.3d 554, 561 (Tex. App. 2004). The movant bears the burden of proving the award is not in the child's best interest. *Stieren*, 103 S.W. 3d at 605.

II. Under the facts of this case, the court denied the Respondent due process of law by failing to hold a hearing on a change of custody and residency.

A. Due Process: Opportunity to be Heard Appropriate to the Nature of the Case

The basic elements of procedural due process are notice and an opportunity to be heard at a meaningful time and in a meaningful manner. *Alliance Mortgage Co. v. Pastine*, 281 Kan. 1266, 1275, 136 P.3d 457 (2006). The adequacy of due process for a particular interest is determined by a three-factor test that considers the private interests affected, the risk of error in the challenged procedures, and the burden imposed on government by more demanding procedural requirements. *Mathews v. Eldridge*, 424 U.S. 319 (1976); *see also State v. Wilkinson*, 269 Kan. 603, 609, 9 P.3d 1 (2000).

Due process is a flexible concept in that "not all situations calling for procedural safeguards call for the same kind of procedure." *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972). "When protected interests are implicated, the Constitution requires notice and opportunity for hearing appropriate to the nature of the case." *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 541 (1985). "In almost every setting where important decisions turn on questions of fact, due process requires an opportunity to confront and cross-examine adverse witnesses." *Goldberg v. Kelly*, 397 U.S. 254, 259 (1970).

The Kansas Constitution Bill of Rights § 18 recognizes and guarantees a person's independent right to due process. The Kansas Constitution does not recognize a separate right to an open court independent from the recognized right to due process, *Bonin v. Vannaman*, 261 Kan. 199, 929 P.2d 754 (1996). If a remedy protected by due process is abrogated or restricted by the legislature, "such change is constitutional if 'the change is reasonably necessary in the public interest to promote the general welfare of the people of the state,' *Manzanares v. Bell*, 214 Kan. 589, 599, 522 P.2d 1292 (1974), and the legislature provides an adequate substitute remedy to replace the remedy which has been restricted." *Aves v. Shah*, 258 Kan. 506, 521, 906 P.2d 642 (1995). Whether case management is an adequate substitute for court is at the heart of this case.

1. **The private interests affected: Defining the fundamental liberty interests of parents & the State's *parens patriae* authority to the best interests of children of divorce and family dissolution.**

    a. **Parental rights as fundamental liberty interests and the best interests of children.**

The United States Supreme Court and the Kansas Supreme Court have clearly identified certain rights of parents as fundamental liberty interests deserving of protections under the Fourteenth Amendment. "The liberty interest . . . of parents in the

care, custody, and control of their children is perhaps the oldest of the fundamental liberty interests recognized by this Court." *Troxel v. Granville*, 530 U.S. 57, 65, 120 S. Ct. 2054 (2000); *See also Sheppard v. Sheppard*, 230 Kan. 146, 630 P.2d 1121 (1981).

The U.S. Supreme Court has held that special attention must be paid to parental rights in due process cases. *See e.g., Little v. Streater*, 452 U.S. 1 (1981); *Santosky v. Kramer*, 455 U.S. 745 (1982). But the rights of parents are not absolute or without limits, particularly when the welfare of children is at stake. *Parham v. J.R.*, 442 U.S. 584 (1979).

The welfare of children is also a matter of state concern. "'When the custody issue lies only between the parents, the paramount consideration of the court is the welfare and best interests of the child." *In re Marriage of Rayman*, 273 Kan. 996, 999, 47 P.3d 413 (2002). The state proceeds on the theory that their welfare can best be attained by leaving them in the custody of their parents and seeing to it that the parents' rights are not infringed upon or denied. *Id.* Over the past three decades, research demonstrating the often negative impact of parental conflict on children of family dissolution has led to legislative enactments and judicial reforms designed to protect or shield children from parental conflict. *See* JANET JOHNSTON, VIVIENNE ROSEBY & KATHRYN KUENHLE, IN THE NAME OF THE CHILD: A DEVELOPMENTAL APPROACH TO UNDERSTANDING & HELPING CHILDREN OF CONFLICTED AND VIOLENT DIVORCE, 2ND ED. 2009; *see also* Linda D. Elrod, *Reforming the System to Protect Children in High Conflict Custody Cases*, 28 WM. MITCHELL L. REV. 496 (2002). Kansas courts are required to "inform the parents, or require them to be informed, about . . . the impact of family dissolution on children and how the needs of children facing family dissolution can best be addressed." Kan. Stat. Ann. § 60-1626(a)(2). Determinations about the best interests of children are, however,

also not without limits. A best interest decision that fails to provide substantial deference to the rights of parents is unconstitutional. *Troxel* at 65.

b. Parenting coordinators in high conflict cases: Balancing liberty interests of parents with the best interests of children.

Several states have enacted statutes for parenting coordinators (PCs) who, like case managers, are assigned to assist families in conflict. *See* Appendix A. Parenting coordinator statutes vary from state to state. Two professional organizations have developed guidelines, but there are no national standards. *See* AFCC Task Force on Parenting Coordination, *Guidelines for Parenting Coordination*, 44(1) FAM. CT. REV. 164 (2006); American Psychological Association, *Guidelines for the Practice of Parenting Coordination*, 67(1) AM. PSYCHOL. 63 (2012). Unlike case management, parenting coordinators are usually only appointed when both parents consent.

Justifications for parenting coordinator statutes and activities have taken two forms. First, some argue that parenting coordinators, who cannot change court orders, are serving something similar to an enforcement function for an existing court order rather than as decision-makers about liberty interests and best interests. For example, the Oklahoma Supreme Court ruled assignment of a parenting coordinator to aid in communications between parents was not the taking of a fundamental right. The Court held that Oklahoma's Parenting Coordination Act, Okla Stat. tit. 43, §§ 120.2-120.3 (2001), bore a reasonable relationship to a legitimate state interest, that being the child's best interests in having two active natural parents." *Barnes v. Barnes*, 107 P.3d 560 (Okla. 2005). The revised Oklahoma Parenting Coordination Act reflects the second approach. To appoint a parent coordinator above the objection of a party, a court must make specific findings the case involves "high-conflict" and the appointment is in the

best interests of the child. Oklahoma's Parenting Coordination Act, Okla Stat. tit. 43, §§ 120.2-120.3 (Amend. 2003).

One D.C. appellate court justified parenting coordination based on both the nature of the interest and the best interests of the child. In justifying a PC appointment to address day-to-day issues over a party's objection, the court noted:

> [A] biological parent's liberty interest is not absolute, and must give way before the child's best interest. In the final analysis, the state has the right and duty to protect minor children through judicial determinations of their interest. Although the parenting coordinator may sometimes supersede mother's] authority to make decisions regarding her children, the parenting coordinator may exercise that power only in limited circumstances, *i.e.*, where Ms. Jordan has a dispute with Mr. Jordan, who also has a liberty interest in making decisions for the children; and where the dispute concerns only a day-to-day issue.
>
> In any event, even assuming that a fundamental liberty interest is implicated, that interest is adequately protected by the procedures available to a parent aggrieved by any decision made by the parenting coordinator. The procedure established by the Special Master Order promotes the best interests of the children by providing a mechanism to resolve parental conflict in a timely fashion.

Jordan v. Jordan, 14 A.3d 1136 (D.C. App. 2011).

Courts have upheld parenting coordinator appointments when limitations of the PC's authority are made carefully spelled out and the PC remains within these parameters. PC appointments have been supported by appellate courts when their authority is limited to what are described as ancillary, day-to-day, or temporary variances in the parenting plan. *See Yates v. Yates*, 963 A.2d 535, 540-41 (Pa. Super. Ct. 2008); *Meyr v. Meyr*, 195 Md. App. 524, 7 A.3d 125, 139-40 (Md. Spec. App. 2010).

Courts have, however, invalidated parenting coordinator appointments and decisions that addressed more than ancillary issues, often referencing the court's exclusive jurisdiction over matters of custody and residency. For example, an Oklahoma

appellate court found unconstitutional an order appointing and authorizing a parenting coordinator to make custody recommendations that were adopted in advance as "orders of the court." *See Kilpatrick v. Kilpatrick*, 198 P.3d 406, 410 (Okla. Civ. App. 2008). The court found this to be an improper delegation of judicial power and contrary to the parents' due process rights under the Oklahoma and United States Constitutions. *Id.* A Florida Court of Appeals panel also reversed a trial court's decision that adopted the recommendation of a parenting coordinator for a change in custody without making any significant findings. *Hastings v. Rigsbee*, 875 So. 2d 772 (Fla. App. 2002). The appellate court ruled that the trial court improperly delegated to the parenting coordinator its role as the finder of fact. *Id.* A California court invalidated as "overbroad and unauthorized by statute" a court's referral of any and all "issues pertaining to implementation of the custody orders to a special master." *Ruisi v. Thieriot*, 53 Cal. App. 4th 1197 (1997).

The Kansas statutory scheme requires different processes for temporary versus permanent issues. Kan. Stat. Ann. § 23-1003(d)(6). Case managers do not have to file recommendations that provide for only temporary adjustments to the parenting plan. When the parties are unable to reach an agreement on a permanent issue, the case manager shall make written recommendations to the Court that the parties are ordered to immediately follow. Kan. Stat. Ann. § 23-1003(d)(1). This is usually interpreted to mean case management recommendations become temporary court orders. Recommendations on permanent issues including but not limited to designations regarding custody, primary residence or child support shall be filed as a Proposed Journal Entry with the Court. Kan. Stat. Ann. § 23-1003(d)(5). If a party objects, the case manager must explain the basis for the recommendations by report or testimony. The Court shall "review" the case

manager's recommendations and any objections, then make a court order. Kan. Stat. Ann. § 23-1003(d)(6).

2. The Risk of Error in the Domestic Case Management Statutes on Matters of Custody and Residency

Due process requires evenhanded procedural application of the law so that individuals are not subjected to the arbitrary use of government power. *Marchant v Pennsylvania R.R.*, 153 U.S. 380 (1894). The required elements of due process "minimize substantively unfair or mistaken deprivations" by enabling persons to contest the basis upon which a State proposes to deprive them of protected interests. *Fuentes v. Shevin*, 407 U.S. 67, 81 (1972). At issue in the case *sub judice* is whether a change of residency of a minor child was fairly accomplished pursuant to a case manager's recommendation that the court endorsed without an evidentiary hearing.

Case management procedures define an alternative dispute resolution and expedited judicial process for parents unable to resolve their conflicts. It is ordered for parents in domestic cases who are unable to utilize neutral dispute resolution services, who demonstrate repetitive conflict as evidenced repetitive litigation, and where at least one parent exhibits diminished capacity to parent. Kan. Stat. Ann. § 23-1002(b)(1)-(4). Case management involves numerous risks of error, of erroneous, unfair, or mistaken deprivations of a parent's liberty interests.

1. The risk of error is heightened when case management can be ordered over the objection of a parent. Appointment of a case manager can be ordered on the court's own motion or above the objections of the parties. Kan. Stat. Ann. § 23-1002(a). Case managers appointed by District judges can address and make recommendations about anything relevant to child custody, residency, and parenting time, whereas those

appointed by AHOs have authority to address anything related to parenting time and visitation. The statutory scheme leaves the method and timing of carrying out the case management duties to the discretion of the case manager and court. Nothing in the statutory scheme limits the case manager to issues raised by the parties. *In re Marriage of Gordon Hanks*, 27 Kan. App. 2d 987, 10 P.3d 42 (2000). Case management can be ordered by the court with limited factual findings, none of which declare a parent unfit.

2. Case management combines numerous techniques, but resembles a judicially-authorized binding arbitration when parents do not agree. The case manager attempts to resolve issues with the parties using a variety of techniques, but it is something "other than mediation." Kan. Stat. Ann. § 23-1001. *In re Marriage of Gordon Hanks*, 27 Kan. App. 2d 987, 10 P.3d 42 (2000). Case management is not confidential. The case manager is expected to communicate with the court through recommendations and reports. The case manager may communicate ex parte if they have information they believe the court should know. Kan. Stat. Ann. § 23-1003.

3. The risk of error increases when case managers have limited legal training and do not have an adequate understanding of Kansas family law and procedure. Case managers are not always attorneys. Case managers are certified mediators who meet training criteria set by district judges for court-appointment. Kan. Stat. Ann. § 23-1002(d)(1)-(4). In making appointments, courts consider, *inter alia*, the case manager's knowledge of the Kansas judicial system and the procedure used in domestic relations cases and the case manager's training and experience in the process and techniques of alternative dispute resolution and case management. Kan. Stat. Ann. § 23-1002(c)(3). There are no established guidelines or standards for case managers.

4. The risk of error increases when case manager reports and testimony are treated differently than reports and testimony from experts. Case managers frequently resemble experts who conduct investigations regarding child custody or parenting time. Kan. Stat. Ann. § 60-1615. It is unclear whether the case manager's report and testimony might be held to the standards of experts and the rules of evidence, particularly demands that expert opinion be based upon admissible evidence (and not inadmissible hearsay evidence). *See State v. Gonzalez*, 282 Kan. 73, 145 P.3d 18 (2006). Case managers frequently consult with other persons to gather information about children, potential parenting time adjustments, or potential legal custodial arrangements. Under the investigation statute, parties may call the investigator and any person consulted for cross-examination. Kan. Stat. Ann. § 60-1615 (c). The same requirements should apply to a case manager's recommendation where collateral sources are used.

5. The risk of error increases when parties do not have access to court. Parties are ordered to attempt to resolve their disputes with the case manager. Kan. Stat. Ann. § 60-1003 (d) (1). Most courts interpret this to mean the parties cannot file motions before the district court unless there is first an attempt to resolve the issue through case management. Allowing parties to litigate in court while also attempting to resolve conflict with the case manager would be confusing and counter-productive.

6. The risk of error increases when parties objecting to a case manager's recommendations are not entitled to *de novo* evidentiary hearing. The Kansas Supreme Court reviewed the constitutionality of an expedited judicial procedure on a child support issue before an AHO, but found no constitutional infirmity because the parent had a hearing before the court. Mother argued it was unconstitutional to deny litigants

sufficient time to present all relevant evidence to a trial judge in a court of record. Mother asserted that a "*de novo* due process review on the record" was required. *In re Marriage of Soden*, 251 Kan. 225, 834 P.2d 358 (1992). Both parents had been present at an AHO hearing and at an additional hearing on the petition for judicial review. The *Soden* court denied mother's due process claim and ruled the court did not abuse its discretion because mother "received notice, a reasonable hearing, and judicial review." *Id.*

7. The risk of error increases when a case manager's recommendation can result in a change of custody or residency without a parent being allowed to testify in court. The Kansas Court of Appeals has also ruled it is an abuse of discretion to terminate a custody trial and rule on the best interests of the child without hearing testimony from a parent who wanted to testify. *In re Marriage of Glenn*, 18 Kan. App. 2d 603, 856 P.2d 1348 (1993). In *Glenn*, the trial court allotted limited time for a hearing, then abruptly halted the proceedings when this time elapsed. Father wished to and planned to testify, but the court did not allow his testimony. The appellate court found the trial court abused its discretion, and favorably cited to a Colorado case in ruling that "a court's interest in administrative efficiency may not be given precedence over a party's right to due process, which includes the right to cross-examine to meet opposing evidence and to oppose with evidence." *See In re Marriage of Goellner*, 770 P.2d 1387 (Colo. App. 1989).

8. Case managers are often professionals with mental health training, but little legal training. Kansas law provides for continuity and stability in the lives of children with more than just an ongoing evaluation of what is in the best interests of children. Evidentiary thresholds specific to changes of custody or residency aid in these goals. A request for a change of custody in court must be accompanied by a sworn affidavit setting

forth with specificity all known allegations or facts claimed to constitute a material change of circumstance. Kan. Stat. Ann. § 60-1628(b). Children's interests are served by requiring that a material change of circumstance has occurred since the previous court order before changing custody or residency. *Johnson v. Stephenson*, 28 Kan. App. 275, 15 P.3d 359 (2000). Defining what constitutes a material change of circumstance has been said to 'elude' precise and concise definition. *Id.* at 280. This is a job for a judge.

9. When a case manager's recommendation on custody or residency is adopted by the court, the case manager's recommendation must include specific fact finding and conclusions of law, a task usually reserved for a District judge. *See* Kan. Sup. Ct. R. 165.

III. Conclusion

In the case *sub judice*, the District court changed residency of the child based on written case manager's recommendations, party objections, and responses. The fact finding did not involve sworn testimony or opportunity for cross-examination and presentation of contrary evidence in court. An abuse of discretion standard was used. While these case management procedures may suffice for ancillary, day-to-day, or temporary adjustments to court-ordered parenting plans, they are inadequate due process when the liberty interests of parents to the care and custody of their children are at stake.

In matters involving the custody and residency of children, Kansas courts should conduct a *de novo* evidentiary hearing, provide the parties with opportunities to testify and present evidence, and make findings of fact and conclusions of law under the rules of evidence and the best interest standard. Anything less falls short of the Constitutional guarantee to the opportunity to be heard in a meaningful way at a meaningful time on a fundamental liberty interest.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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APPENDIX A

JURISDICTIONS WITH PARENTING COORDINATION STATUTES OR COURT RULES

Nine of those jurisdictions have statutes authorizing the appointment of parenting coordinators. *See* Cal.Civ.Proc.Code § 638 (Deering 2010); Colo.Rev.Stat. § 14-10-128.1 (2010); La.Rev.Stat. Ann. §§ 9:358.1-358.9 (2010); Me.Rev.Stat. Ann. tit. 19-A, § 1659 (2010); Minn.Stat. § 518.1751 (2010); N.C. Gen.Stat. §§ 50-90 to -100 (West 2005); Okla. Stat. tit. 43, §§ 120.1 to 120.5 (West 2003); S.D. Codified Laws § 25-4-63 (2008); Tex. Fam.Code Ann. §§ 153.061 to 153.611 (Vernon 2009). Fifteen of the jurisdictions use a court rule. *See* Ill. Cook Co. Cir. Ct. R. 13.10 (2011); Ind. Lake Co. L.R. 45-FL-00-8 comm. E; Ind. Wayne Co. L.R. 89-FL00-11; Ky. Jefferson County Fam. R. Proc. 707; Mo. 31st Cir. Local R. 6.9(d)(6); Nev. 1st. Jud. Dist. R. 5(6) (2010); Ohio Butler County Ct. Com. Pl. Dom. Rel. R. 44; Ohio Lucas County Ct. Com. Pl. Dom. Rel. R. 20; Ohio Mahoning County Ct. Com. Pl. Dom. Rel. R. 34; Ohio Stark County Fam. R. 16; Pa. Allegheny County Civ. & Fam. R. 1915.17 (2010); Pa. Erie County Civ. Local R. 1940.10 to .16 (2010); Utah R. Jud. Admin. 4-509 (2010); Vt. R. Fam. Proc. 4(s) (2010); Wash. Thurston County Super. Ct. Local Spec. R. 94.13 (2010). And five jurisdictions have both a statute and a court rule. *See* Ariz.Rev.Stat. § 25-405 (LexisNexis 2010) and Ariz. Fam. Law R. Proc. 74 (as revised 2011); Fla. Stat. Ann. § 61.125 (LexisNexis 2010) and Fla. Fam. Law R. Proc. 12.742 (2010); Idaho Code Ann. § 32-717D (2010) and Idaho. R. Civ. P. 16(*l*); N.D. Cent.Code §§ 14-09.2-01 to -08 (2010) and N.D. R. Ct. 8.11; Or.Rev. Stat. § 107.425 (2009) and Or. Multnomah County Supp. Local R. 8.137 (Effective Feb. 1, 2011).

See Jordan v. Jordan, 14 A.3d 1136 (D.C. App. 2011).