



SEALING DIVORCE CASE FILE

It has become increasingly more difficult to persuade a Maricopa County Superior Court Judge to seal a divorce file. If there are sensitive issues relating to custody, particularly custody evaluations and custody reports, the Court is much more likely to seal those documents in an effort to protect the best interest of the minor children or, perhaps, the party from physical or emotional harm.

However, there is also a competing interest of First Amendment access for the rights of the general public to have such information.

Recently, Maricopa County Supervisor Fulton Brock filed a motion asking the Court to seal his entire file. Superior Court Judge Robert Miles denied the motion to seal the entire file, but indicated he would consider sealing sensitive future filings.

Compare this to the divorce case of Phoenix Suns guard Steve Nash wherein Superior Court Judge Carey Hyatt denied Nash's motion to seal the case. Judge Thomas McClure has sealed many of the child custody proceedings.

Rule 13, Arizona Rules of Family Law Procedure provides as follows:

Public access to proceedings and records

- A. Presumptively open family court proceedings. Family Court proceedings are presumptively open to the public; however, to promote amicable settlement of the issues, to protect the best interest of the minor child, or to protect the parties from physical or emotional harm, the Court may exclude the public pursuant to paragraph B. Further, paragraph D provides access to records. Records of Family Court proceedings shall maintained and disclosed in accordance with Rule 123, Rules of the Supreme Court, and Rule 43 of these Rules. Unless otherwise provided in Rule 123, Rules of the Supreme Court, the Court may, upon a finding that the confidentiality or privacy interest of the parties, or minor children, or other person whose information appears in record outweighs the public interest in disclosure, make any record of Family Court matters closed or confidential or otherwise limit access to such records.

Clearly, our rules provide a mechanism to seal the records; however, the burden of proof is upon the party seeking those records to convince the Court of the importance of protecting the best interest of the minor child or a party from physical or emotional harm.