

## Sorensen Quick Reference

*In re Marriage of Sorensen*, 166 P.3d 254 (2007), CRCP 17.

No “substantial question exists regarding the mental competence of a spouse in a domestic relations proceeding,” or spouse’s interests are “otherwise adequately protected” → no GAL.

What creates a substantial question regarding the mental competence of a spouse in a DR proceeding?  
PET, RSP, or counsel raises the issue; OR  
Question of mental competence arises due to court’s observations on the record.

If substantial question regarding mental competence arises due to court observations:

- court can probably make a record noting what has been observed regarding the party’s conduct, statements, etc., and appoint a GAL; OR
- court could set the matter for a *Sorensen* Hearing, with or without appointing an expert to conduct an evaluation of the competence criteria.

*Sorensen* hearing to determine whether spouse is competent or whether spouse’s interests are otherwise adequately protected.

Does same judge hear?

Hearing is evidentiary. Can opposing party present evidence? *Sorensen* suggests so.

Court must make a determination of whether spouse is competent under the following criteria:

- (1) is mentally impaired so as to be incapable of understanding the nature and significance of the proceeding;
- (2) is incapable of making critical decisions;
- (3) lacks the intellectual capacity to communicate with counsel; or
- (4) is mentally or emotionally incapable of weighing the advice of counsel on the particular course to pursue in his or her own interest.

GAL appointment (CJD 04-05): Authority for appointment CRCP 17, *Sorensen*

- (1) Party completes JDF 208
- (2) Court issues order appointing GAL using JDF 210 if party is indigent.
- (3) Who to appoint?
- (4) Supplemental Order to specify GAL duties?

How does GAL represent best interests? Fact witness? Best interest lawyer? Both?

Settlement: GAL “stand in shoes”? Settlement in best interests? More than of conscionability?

Even if GAL “approves,” or finds settlement in best interests, Court should make independent finding of best interests → Set settlement for hearing.