

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.