

Instructions for Filing Divorce

Chapter 125 of the Nevada Revised Statutes addresses Dissolution of Marriage, 125A governs the Uniform Child Custody Jurisdiction Act, 125B governs Child Support, 125C governs Custody and Visitation, while Chapter 126 covers Parentage. Proceedings in Family Court are generally subject to the Nevada Rules of Civil Procedure.

In any contested action in Family Court (divorce, annulment, custody, support) either party can request that the hearings be private. EDCR 5.02. Lawyers, litigants, witnesses or others may not discuss with minor children the issues and proceedings before the court. EDCR 5.03. Minor children may not be brought to hearings unless specifically requested or approved by the court. EDCR 5.06.

OBTAINING A DIVORCE IN NEVADA

There are 2 Ways To Obtain A Divorce

- => Joint Petition Process (Uncontested)
- => Complaint and Answer Process (Contested or Uncontested)

JOINT PETITION/UNCONTESTED DIVORCE

Uncontested divorce means that both parties are able to reach an agreement concerning every issue in their case, including property division, children, support, visitation.. The agreement is simply incorporated into the divorce decree. There are a number of factors to consider when determining whether an uncontested divorce is right for a particular couple. It is always important to recognize, however, that the legal positions of the husband and wife are materially adverse even if they ultimately agree on the terms for divorce.

Generally, parties seek an uncontested divorce because they have independently, fairly and comfortably come to an agreement on:

- 1) The desire to obtain a divorce;
- 2) The division of community property and debts;
- 3) Whether or how much spousal support one party will pay;
- 4) Child custody, support and visitation; and
- 5) How they will pay the various costs of divorce.

Statutory Requirements for Using Joint Petition

To use a joint petition both parties must agree to sign the petition. If there are any disagreements over the terms of the divorce a joint petition cannot be used. The major advantage of using a Joint Petition is that the parties incur lower fees and costs because they are often self-represented and the divorce is obtained by using affidavits. Generally the petitioners do not have to appear in court unless the court specifically requires it. There is a Filing Fee for a Joint Petition. (See Tab A). Filing Fees may be waived for low income persons at the discretion of the assigned judge.

There are specific requirements under Nevada law (NRS§ 125.181 to 125.184) which must be met before a joint petition maybe used:

1) Jurisdiction: One spouse must have resided in Nevada for at least 6 weeks before the joint petition is filed. If the joint petition addresses child custody, then the children must have resided in Nevada for at least six months before the joint petition is filed.

2) Grounds for divorce: Parties must be able to allege one of the following grounds for divorce:

- a. incompatibility; or
- b. the husband and wife have lived separate and apart for 1 year without cohabitation.

3) Provision for minor children of the relationship born before or during the marriage, or adopted by the parties: The parties must agree upon custody and a detailed visitation schedule for the minor children and the amount and manner of payment for child support. This may be incorporated into the joint petition and divorce decree or set out in a separate agreement.

4) "TRANSPARENTING CLASS " - REQUIRED FOR DIVORCING

PARENTS: The parents must attend a class called "TransParenting," required by EDCR 5.07, however, they do not need to go at the same time. The class must be completed by both parents prior to submitting the

Joint Petition. The class is offered throughout the week by Palo Verde Child & Family Services (243-4357) and by Family Solutions (395-8417). The class is 3 hours in length and the cost is \$40.00 per parent, payable by cash or money order. Fee waivers are available if an Affidavit of Financial Ability, available through the Court, is submitted. Courses in Spanish are also available.

5) Community property/debt agreement: Parties must agree upon the division of community property and debt, if any, and must execute any deeds, certificates of title, bills of sale or other evidence of transfer necessary to effectuate the agreement.

6) Spousal support/alimony: Parties must either waive any rights to spousal support or agree and set forth the amount and manner of spousal support in the Joint Petition or in a separate agreement. The words alimony and spousal support may be used interchangeably.

7) Waiver of rights: By filing a Joint Petition, the parties waive their respective rights to written notice of entry of the decree of divorce, the right to appeal, the right to request findings of fact and conclusions of law and the right to move for a new trial.

8) Both want divorce: Parties desire that the court enter a decree of divorce.

9) Other Information Needed in Joint Petition

- a. The date and the place of the marriage.
- b. The mailing address of both the husband and wife.
- c. Whether the wife elects to have her maiden or former name restored and, if so, the name to be restored. (The wife has the exclusive right to decide whether to keep the married name or to restore a former name.)
- d. An affidavit of Resident Witness corroborating that one of the parties has been a resident of the state for at least 6 weeks.
- e. Attach and identify any separate marital settlement agreements which the parties want the court to approve or make a part of the divorce decree.

10) Documents Filed For A Joint Petition

- a. Joint Petition plus all separate agreements (if any).
- b. Affidavit of Resident Witness.
- c. Proposed Decree of Divorce.
- d. If there are any minor children, a TransParenting Class certificate for each parent.
- e. Family Court Cover Sheet.
- f. Filing Fee

COMPLAINT AND ANSWER PROCESS

The second way a divorce may be obtained is by the filing of a Complaint (i.e. a lawsuit) for divorce. A Complaint is filed by only one party. Unlike the Joint Petition, the other party does not need to agree to the terms of the Complaint. The "Plaintiff" is the spouse who files the complaint; the "Defendant" is the other spouse.

Again, there is certain information that must be included in the Complaint. The Plaintiff will request specific terms for the divorce, including child custody, support and visitation, spousal support, if applicable, and the division of community property and community debts. The Defendant must be properly "Served" with the Summons and Complaint. After the Defendant is served the Defendant must file an Answer with the Court within 20 days, or, by failing to answer, will allow a Default to be entered (service of process, Answers and Defaults are explained below).

Contents of The Complaint

An action for a divorce begins with the filing of a Complaint. A Complaint must be "verified" which means that the Plaintiff must sign an oath swearing that the contents set forth in the document are true and correct as of the date the Complaint is signed. The completed Complaint must also be notarized. It is extremely important that all the facts set forth in the Complaint are accurate. A Complaint is a very important legal document and it is important to properly set forth the requested terms for divorce. We highly recommend that you consult with a private attorney concerning the facts of your case **BEFORE YOU FILE ANY COURT DOCUMENTS.**

A Complaint for divorce should include basic facts about the parties and set forth the terms of the divorce desired by the Plaintiff (spouse filing the complaint):

1) The date and place of the marriage and the residence/location and mailing addresses of both parties sufficient to give the court jurisdiction over the parties and the matter.

2) Whether the couple has any minor children (including adopted children) and whether the wife is pregnant. If there are children, or the wife is pregnant, the Complaint must state:

- a. Plaintiff's custody preference and residence of children;
- b. A request for child support, if applicable; and whether the Court should order wage withholding (NRS 125.450(2));
- c. A detailed visitation schedule for the children; and
- d. Plaintiff's preference for which parent will provide health insurance coverage for the child(ren).
- e. Whether there is any community property or debts which need to be divided by the Court and the proposed division of the community assets and debts.
- f. Whether there is separate property or debt of one party that the court needs to confirm.
- g. Whether the wife wishes her former name to be restored to her.
- h. Whether alimony (spousal support) is being sought
- i. The cause for the divorce. For example:
 - i. Insanity for two years (seldom used);
 - ii. Living separate and apart for one year;
 - iii. Incompatibility in marriage.

Once the Complaint is filled out and the verification is signed and notarized, it must be filed at the Family Court Clerk's Office. The Filing Fee) is payable in cash, by check (with a Nevada driver's license) or by money order. If the Plaintiff cannot afford the filing fee, he/she may request that the fee be waived by filling out a Request to Proceed In Forma Pauperis. The Self Help Center has this form available.

Documents That Must Be Filed With The Complaint

Summons: A Summons is a document that tells the Defendant that he or she is being sued and must answer the Complaint within 20 days of its service or Judgment will be entered against the Defendant by Default. The Summons is a preprinted form which must be filled out by the Plaintiff and "issued" by the Clerk of the Court. The Summons and Complaint must be served together upon the Defendant, after the Complaint has been filed with the clerk. See below for service requirements. A standard summons form is available in the Clerk's office.

The Family Court Cover Sheet: This is a document that collects data on each case filed in the Court and is available from the clerk's office. The form is also included in the Self Help forms packets.

The Joint Preliminary Injunction (Not mandatory): A Joint Preliminary Injunction is a court document directed at the Plaintiff and the Defendant. At the request of either party, the Clerk will issue a preliminary injunction against both parties. This injunction prohibits the parties from transferring, encumbering, concealing, selling or otherwise disposing of property without consent of the court; enjoins them from

harassing or stalking each other; or enjoins them from taking a child from the state in order to deprive the court of jurisdiction over the action. The Joint Preliminary Injunction is a standard form that is available from the Clerk's office.

The injunction becomes effective against the party obtaining it upon its issuance and becomes effective against the other party after it has been served on them. It will last until a final judgment or divorce decree is entered. Note that this is different from a restraining order or a temporary protection order. The injunction prohibits improper sale, removal or other disposal of the assets of the marital community and removal of children from the court's jurisdiction. Recourse for violation of the Joint Preliminary Injunction is effected through the court rather than through law enforcement.

Serving the Summons And Complaint

Constitutional principles of Due process require that a Defendant must be notified that he or she is being sued and given an opportunity to respond. This is done by "service of process." Statutes governing service of process are strict and must be properly followed. The Judge will not take any action in a case unless the judge knows that the Defendant has been properly served. The Nevada rules of service which apply can be found in Nevada Rule of Civil Procedure 4 and Nevada Revised Statute 14.065. The Plaintiff, him or her self, is not permitted to actually serve the Defendant, but rather, must arrange for service through a third party.

Personal Service

If the Defendant lives in Nevada, personal service of the Summons and Complaint is required. Personal service is achieved by serving the papers:

- 1) On the Defendant personally' or
- 2) By leaving copies at his residence with someone of suitable age and discretion also residing there; or
- 3) By delivery to an authorized agent (such as Defendant's attorney) who signs an Acceptance of Service.
- 4) The Summons and Complaints may be served by:
 - a. Sheriff/Constable of County where Defendant is found;
 - b. Any citizen in the United States, over the age of 18, who is not an interested party to the lawsuit.

Note: The Summons and Complaint must be served within 120 days after the summons is issued or the complaint can be dismissed. An extension of this time period can be requested under certain circumstances.

Note: If the spouse will agree to just accept the Summons and Complaint, he or she may sign' an Acceptance of Service.

There are also numerous private process servers who will serve the documents for a similar fee - private process servers tend to effect service (that is, locate the Defendant and deliver documents) quicker than the Sheriff's Bureau.

Service By Publication - N.R.S. 4(e)(1)

It is possible that the Plaintiff may not be able to personally serve a Defendant. If the party cannot be found in Nevada after "due diligence" (checking the post office, DMV, Voter's Registration, Nevada Power Co., Southwest Gas Corp., local telephone

companies, Tax Assessor's Office, County Recorder's Office, Defendant's former employer, family, friends, and neighbors), the Plaintiff may request permission to serve by "publication." Generally, service by publication is permitted when the Defendant is living outside the state at an unknown address; the Defendant has left the state; after due diligence the Defendant cannot be found; or the Defendant is concealing himself or herself to avoid service.

When an action is "Published" the Summons MUST have a sentence added which states the nature of the action, e.g. "This is an action to dissolve the bonds of matrimony between Plaintiff and Defendant." An Affidavit of Due Diligence must be signed by the person (NOT the Plaintiff) who tried to locate the Defendant, setting forth the number of attempts made and what was done to try to find the Defendant. This Affidavit must be filed with a proposed Order for Service by Publication. (Tab E). If the court grants the request, the court's instructions for service must be strictly followed. Generally this means the Summons and Complaint must be mailed to the last known address of the Defendant and proof of mailing must be filed with the court. In addition, the Summons and Complaint will need to be published in a newspaper designated by the court and proof of publication filed with the court.

If the Party Resides Outside of Nevada

If the Defendant lives outside of Nevada, there are two choices: serve by publication (NRCP 4(e) - BE VERY CAREFUL!) or, file a Motion and supporting Affidavit for Out of State Service and use a local Sheriff to serve the documents upon the Defendant in the state where he or she lives. Generally, if the whereabouts of the out-of-state Defendant are known to Plaintiff, the court will require that Defendant receive personal service at the out-of-state residence.

Affidavit of Service

After service is accomplished, the completed Affidavit of Service form must be filed with the Family Court to prove that the Defendant has been served. The person serving the documents must complete the Affidavit of Service by writing down the location, date and time that the Defendant was served, sign and date the form, and have it notarized. The Plaintiff cannot fill out the Affidavit of Service form himself.

Filing the Answer/Counterclaim

The spouse being sued for divorce is a "Defendant." Once a Defendant has been served with a Summons and Complaint for Divorce, he or she has twenty days in which to file and serve an Answer or Answer and Counterclaim.

Warning: If a Defendant does not think that Nevada is the right place for the case to be heard, he should consult with an attorney BEFORE FILING ANY DOCUMENTS. Filing of a document may result in the Defendant being forced to go forward in the Nevada court. Be very careful since the deadline for default remains the same.

There is a filing fee to file the Answer to a Divorce Complaint with the Clerk's office. If the Defendant cannot afford the filing fee, he or she may also request that the fee be waived by filling out a Request to Proceed In Forma Pauperis. The Self Help Center has this form available. All documents that are filed after the commencement of

the lawsuit, (e.g. the Answer) must be served on the opposing party but this may be accomplished by mailing them to the opposing party by first class mail. They do not need to be served in the same manner as the original Complaint. Proof of Service (e.g. a Certificate of Mailing) must be filed with the Court.

The Defendant has three options after being served with a Complaint:

- 1) File an Answer, within 20 days of service, agreeing to the terms set forth in the Complaint;
- 2) File an Answer, within 20 days of service, denying some or all of the terms in the Complaint and filing a Counterclaim setting forth the terms of divorce that the Defendant seeks; or
- 3) Default by not filing an Answer (this means Plaintiff gets what is sought in the Complaint).

Answer That Agrees To The Terms Of The Complaint

An uncontested divorce may be obtained through the Complaint and Answer process if the Answer filed agrees to the terms of the Complaint. Of course, this will not be known until the Answer is filed with the court.

Although the Complaint/Answer method of proceeding is slightly more difficult to do when the parties are both unrepresented, it is probably the better choice particularly when they can afford to involve attorneys. Often the parties are able to come to an agreement on all issues (property division, child custody, support, etc.) but because they are unfamiliar with the applicable law and the court system, they are uncomfortable filing a joint petition on their own because they might "miss" something. The Complaint and Answer process places the parties in an adversarial position and may give the parties more legal "remedies" if something goes wrong. For example, if both parties sign and file a joint petition and one party leaves town with no forwarding address, when the judge later wants something changed, the parties are out of luck and the divorce does not go through unless the missing party can be located. Or, one party may be reluctant to actually sign the joint petition, even though they agree to the terms of the divorce.

When a Complaint and uncontested Answer are filed, the parties either must attend a "prove-up" hearing or request a summary disposition to finalize the divorce.

Defendant Answers And Contests Complaint

If the Defendant files an Answer disagreeing with some or all of the terms in the Complaint then the matter is "contested". All parties in contested divorce actions are encouraged to obtain legal representation. A contested divorce involves complex procedural matters, discovery and a trial. It is not easy for the self-represented litigant to navigate the system.

If a Defendant wants a different result in the divorce than the terms requested in the Complaint he/she must file an Answer denying those disputed terms. It is wise to file an Answer with a Counterclaim where the issues in dispute are significant or additional relief is requested that was not included in the Complaint. The court cannot grant relief that is not requested by a party. Therefore, even if the Plaintiff does not ultimately get what he or she requests in the Complaint, if the Defendant has not made his own request

for relief (in the form of a Counterclaim), the Court will not know what to grant the Defendant. An Answer and Counterclaim are combined into one document.

If a Counterclaim is filed, the Plaintiff must respond by filing of a Reply to Counterclaim by Plaintiff within 20 days after service of the Counterclaim. There is no filing fee for a Reply

Failure to Answer – Defendant Defaults

If the defendant was properly served and does not file an Answer within 20 days after service of the Summons and Complaint, the Plaintiff may obtain a Default Judgment against the defendant. The Plaintiff must first request that the clerk's office issue a "Default", indicating that an Answer has not been filed with the Clerk. The Plaintiff must then either submit this Default and a proposed Divorce Decree to the judge along with any other paperwork required or schedule a "prove-up" hearing. Note, however, that the Defendant may return to Court and ask the court to "set aside" the default, for good cause. Defaults are generally disfavored and a court will set aside a default judgment if the Defendant can show "good cause" for doing so within six (6) months of entry or even later if there was fraud.

Prove-Up Hearing

To obtain a prove-up hearing in an uncontested divorce, after the Answer is filed, the Plaintiff should go to the Clerk's office and request a "setting slip." The Clerk will tell the Plaintiff the days and times available for the hearing, which may vary by Judge/Department. Prove-up hearings are also held twice each month on Wednesday evenings, beginning at 6:00 p.m. The Plaintiff needs to bring a resident witness, that is, someone who can testify that the Plaintiff has lived in Clark County for at least 6 weeks prior to the date the Complaint was filed, a certificate of attendance from the TransParenting class and a completed Child Support and Welfare Party Identification Sheet for each parent, if applicable, and a proposed Divorce Decree.

At the "Prove-up" hearing the court expects the Plaintiff to state certain information for the court record including: Plaintiff's name and address, period of residence, whether the facts in complaint are true, whether the grounds for divorce alleged are true (usually, incompatibility), names and ages of children, child support agreement or amount sought, etc. Prior to the hearing, the Plaintiff will need to obtain a copy of "What You Should Do and Say at Your Uncontested/Prove-up Hearing" from the Self Help Center. At the end of the Prove-up hearing, if everything is in order, the court will grant an absolute Decree of Divorce and will sign the Decree. The Decree then must be filed with the Clerk's office. Although the Plaintiff and the resident witness will have to attend court, the hearing is very quick and the Decree is usually signed right then, thus waiting for the documents to come in the mail is avoided.

Request for Summary Disposition

If the parties do not want to attend a Prove-up hearing, the Plaintiff may file with the Clerk a "Request for Summary Disposition of Uncontested Divorce" and make sure the following documents are in the file and dropped off at the Judge's chambers:

- 1) Complaint

- 2) Answer
- 3) Proof of attendance at TransParenting Class (when minor children) for each parent
Child Support and Welfare Party Identification Sheet for each parent
- 4) Affidavit of Resident Witness
- 5) Copies of any separate agreements regarding child custody, property division, e
- 6) Proposed Divorce Decree (Tab K).
- 7) Forms for these documents and detailed instructions are available at the Family Court Self Help Center.

What Happens Next?

Mandatory Mediation

Whenever there is a dispute on child custody, access, or visitation, the parties must participate in mandatory mediation. (EDCR 5.70). (Tab J). Mediation can begin:

- (1) once both parties sign a "Stipulation" (agreement) for mediation; or
- (2) if one party submits a "Request" for mediation.

The parties can select a private mediator or use the court-affiliated "Family Mediation Center" which is on the first floor of the family courthouse. If the parties do not do this prior to the first hearing, the judge will usually not hear their case and will send them back to mediation, so it is best to do this right away.

A party may request an exemption from mediation if there are issues of child abuse or domestic violence or if a party is out of state. If mediation does not resolve all of the problems in a case, the case proceeds. The Judge does not generally learn what happened in mediation but will be informed as to whether mediation succeeded, failed and was participated in good faith.

The parties will generally then have a hearing to determine who will be awarded primary physical custody or joint physical custody. The sole standard applied by the trial judge is the best interest of the child. NRS 125.480 If the case is not resolved, the case continues. The discovery process starts. The parties are required to meet and exchange documents, can request documents, take depositions, file Motions and prepare for trial. Litigants should consult with an attorney.

Discovery and Trial

An event called an "early case conference" must be held within 30 days after the Answer is filed. This is the time when both parties, through their attorneys, or in person if they are representing themselves, meet and exchange documents. A notice setting the conference must be prepared by the Plaintiff, or if not completed in the proper time, then by Defendant. Most often a letter is sent along with the Notice of Early Case Conference requesting all relevant documents. After the meeting, the parties must file a

"Joint Case Conference Report" with the court telling the judge what happened at the meeting, whether there are objections to resolve, and how much time is required for trial. If both parties cannot agree on the Case Conference Report, an individual one is filed by one party and the other party files an objection. The Self Help Center has Joint Case Conference Reports that litigants may use. A Case Conference Report **MUST BE FILED** in order to obtain a date for trial.

The document is also filed with the Discovery Commissioner. The Discovery Commissioner is a court appointed Master who oversees certain items for the judges. The Discovery Commissioner then issues a "Scheduling Order." This document sets a time frame for the case. Once this document is issued, the court then usually issues a trial date.

At this point in the case, the parties can perform "discovery." "Discovery" is the name for the process where one party gets information from or about the other party. For example, if a person suspects his or her spouse is hiding money, "Interrogatories" can be sent (propounded) to the

opposing spouse asking him/her to state the names and the account numbers of all bank accounts. The other side must answer these Interrogatories, under oath. "Requests for Production" can be served on the opposing party requesting copies of documents. Subpoenas can be served upon third parties for documents, and "depositions" (oral questioning before a court reporter, under oath) of the parties or other witnesses with relevant information can be taken. Discovery can be complicated and it is recommended that parties consult with an attorney.

Motions

Motions are very common in a family law case. Motions may be filed with the Complaint or Answer or at any time thereafter. Motions ask the court to make temporary orders concerning who will pay the bills, have custody of the children, or have exclusive use of the house pending the divorce. Some of the most common motions are explained below. Child custody **MUST** be decided by Motion prior to trial. When asking for more than one Motion to be granted at a time, the Motions are combined into one document.

A. Motion for Temporary Fees and Allowances - This Motion asks the court allow one side to use "community property", that is, joint funds for certain purposes (such as, to pay attorney's fees) and/or the right to exclusive use of the marital residence or a jointly owned automobile, while the case is pending.

B. Motion for Temporary Alimony - This Motion asks the court to award a party temporary alimony until the court finally decides the case (including whether to award alimony on a more permanent basis).

C. Motion for Temporary Child Custody - This Motion asks the court to resolve the issue of legal and physical custody on a temporary basis. "Legal" custody is the right to be involved in decisions involving the child such as school, travel, medical treatment, etc. "Physical" custody is the right to have the child reside with a party at a certain time.

D. Motion for Temporary Child Support - This Motion asks the court to award child support to the parent who has temporary custody of the child.

Trial

If the case cannot be settled, ultimately the case goes to trial. The trial will be in front of a Judge and the Judge will decide things such as the division and value of community property and debt,

alimony, child custody, and child support. Once the case is finished, the Judge will state the terms of the Divorce. The prevailing party then prepares the Decree of Divorce for the Judge to sign. When the litigant receives the signed Decree, he/she will file a Notice of Entry of Decree and mail it to the opposing party. Child Support General Overview

Child Support is money paid by the non-custodial parent to the custodial parent. (Note: The "custodial parent" is the parent who is granted primary physical custody.) '

Child custody and child support are usually decided at the pre-trial stage of the case and local rules require that all contested family matters involving minor children must be submitted to the judge prior to the setting of a trial date. (EDCR 5.81). If the parties have shared physical custody, each parent may have a child support obligation.

Monthly Support Formulas

In Nevada, either parent may be ordered to pay temporary or permanent child support. Temporary support is usually only for the period during the divorce or separate maintenance action is pending; however, temporary support may also be ordered in a protection order against domestic violence.

Nevada law contains specific guidelines for the correct amount of child support to be awarded and is determined by statutory formulas relating to the parent's gross monthly income. NRS §§ 125B.070, 125B.080. In determining the amount of child support, the court considers the following formula:

CHILD SUPPORT PERCENTAGE CALCULATION

- ◆ 1 child, 18% of gross monthly income;
- ◆ 2 children, 25% of gross monthly income;
- ◆ 3 children, 29% of gross monthly income;
- ◆ 4 children, 31% of gross monthly income;
- ◆ For each additional child, an additional 2% of the parent's gross monthly income is added.

The minimum amount of support that will be awarded is \$ 100.00 per month, per child, regardless of income (unless there is a specific order from the court stating otherwise). The maximum amount of support that will be awarded is subject to a presumptive maximum.

**THIS PRESUMPTIVE MAXIMUM SCHEDULE ONLY APPLIES AFTER
CALCULATION OF PERCENTAGE IF GREATER THAN \$500.00 PER MONTH
PER CHILD:**

Atleast	Notgreaterthen	MaximumAmount/child
\$0	\$4,235	\$530
\$4,235	\$6,351	\$583
\$6,351	\$8,467	\$637

\$8,467	\$10,585	\$689
\$10,585	\$12,701	\$742
\$12,701	\$14,816	\$795

If the parent's gross monthly income is greater than \$14,816, the presumptive maximum will be \$849.

A court may change the amount of support from the formula, (even lowering it below the minimum or raising it above the maximum) after having made special findings. The Court will take into consideration the following:

- 1) The cost of health insurance for the child;
- 2) The cost of child care;
- 3) Any special educational needs of the child;
- 4) The age of the child;
- 5) Any responsibility of the parents for the support others;
- 6) The values of services contributed by either parent;
- 7) Any public assistance paid to support the child;
- 8) Any expenses reasonably related to the mother's pregnancy and confinement;
- 9) The cost of transportation of the child to and from visitation if the custodial parent moved with the child from the jurisdiction of the court which ordered the support and the noncustodial parent remained;
- 10) The amount of time the child spends with each parent;
- 11) The relative income of both parents; and
- 12) Any other necessary expenses for the benefit of the child.

How Long Does The Obligation To Pay Child Support Last?

Generally, child support must be paid until the child reaches 18 years of age. However, if the child is still in high school, child support will continue until the child's graduation from high school or the child's 19th birthday, whichever occurs first. If the child is disabled, child support may continue until the child is self-sufficient. If the child becomes emancipated or is adopted by another parent, child support will end at that time.

Can An Order For Child Support Be Changed?

YES, under two situations:

- 1) The court must review the child support ordered every 3 years at the request of either parent; and
- 2) The court will review the amount of child support ordered if there has been a change in circumstances. (Examples of "change of circumstances" would be the loss of a job, a new job which pays more or less than the old job.)

How Can An Order For Child Support Be Enforced ?

A valid child support Order containing a provision for wage assignment, may be enforced against a non-custodial parent who is more than 30 days delinquent in any portion of the payments, and working in the State of Nevada, by submitting a Wage Assignment Notification and a copy of the child support order directly to the employer. (Tab M)

Also, a custodial parent may seek to enforce the child support order by filing a Motion for an Order to Show Cause. This motion requires a noncustodial parent to explain to the Court why he or she should not be found in contempt of court for failing to pay child support. The Court is asked to enforce the child support order by the filing a motion with the court setting out the facts that demonstrate the other party's failure to obey court's child support order. This is usually done by showing a court a log of all child support payments paid and missed.

Another way to enforce child support is to ask the Court to issue a wage attachment order. NRS 125.450(2). If a non-custodial parent is more than 30 days overdue on child support payments, the Court will issue an order garnishing his or her wages, so that payments will be withheld from his or her paycheck and sent directly to the custodial parent . If the non-custodial parent has income from other sources (such as rent, royalty or interest payments) the court may order an attachment of this income to pay child support. In addition, the court may grant a lien on the noncustodial parent's real or personal property that requires that the proceeds of the sale of any such property be secured to pay his or her overdue child support obligations. (The lien must be recorded.) The Court may also order the interception of the non-custodial parent's tax returns.

The Clark County District Attorney Family Support Division will assist the custodial parent in obtaining child support by these and other methods. They may help locate a missing non-custodial parent and can process out-of-state support payments on behalf of the custodial parent.

Child Custody

There are two distinct types of child custody in Nevada: Legal Custody and Physical Custody. There is a presumption that Legal Custody will be "joint." This means that both parents are entitled to school records, medical records, access to extra-curricular events and activities and to provide influence in the rearing of the child. If a parent requests "sole" legal custody, that parent will need to prove to the court that there is a sufficient reason to deny joint legal custody. In addition, the court must also make a specific finding that joint custody is not appropriate. A parent seeking "sole" legal custody has a heavy burden of proof.

Physical custody is what most parents litigate. Physical custody determines where the child will reside on any given day. There are several possibilities for physical custody: Primary Physical Custody to Dad, Primary Physical Custody to Mom, Shared or "Joint" Physical Custody (thus the confusion), or Sole Physical Custody (generally only granted if the court grants Sole Legal Custody). Nevada law requires that physical custody schedules be specific enough to be enforced. Thus, parties would avoid language such as "every other weekend" in favor of more specific language as "the 1st and 3rd weekends of each month from Friday at 6:00 p.m. through Sunday at 6:00 p.m."

Legal Separation/Separate Maintenance

In Nevada, a Decree of Separate Maintenance is available wherein all the issues discussed above(child custody, support, property settlement, etc.) are addressed but a divorce does not occur. This may be an alternative when the parties want to remain married to each other but live apart while resolving the issues concerning children, property, alimony, etc. There is debate regarding the effectiveness of a

Decree of Separate Maintenance as to future debt obligations. Litigants are encouraged to consult with an attorney. This class does not cover this issue but the Self Help Center does have the forms available.

In Nevada, a period of legal separation is not required prior to a divorce. Legal Separation Agreements are primarily used before a case is filed and are contracts setting forth the agreements of the parties.

Your Family Court Hearing.

If you have a hearing in the Family Court and are representing yourself, you will have a better chance of success if you prepare as much as possible. One of the best methods to prepare yourself for a family court hearing before a certain judge is to observe the Judge and how people behave in the courtroom before your hearing date. Courtroom proceedings are generally open to the public so attend a hearing prior to your own court hearing. By attending this open hearing in advance of your hearing, you will be able to observe the Judge's reaction to certain arguments and to the behavior of lawyers and witness how other individuals represent themselves. Consider hiring an "unbundled" attorney to appear with you at your court hearing.

If you have a hearing set in the Family Court, you should check the monitors as you walk in. They list each case, the time the case begins, and the number of the Department.

Dress appropriately. Many people do not realize that Court is formal. Wear a suit or dress slacks. Sneakers, T-shirts, and tank tops are prohibited.

Be on time. People who are late often lose because they are not there and the Judge assumes they do not wish to contest the case.

Order of speaking. The person who filed the Complaint or Motion begins. The person should present his case in five minutes or less. You should always start with the most important issues. When the Plaintiff has finished explaining the reasons why he should be granted the relief requested, the Judge will then allow the Defendant to speak. Always address the Judge; do not address the other side. This is not the time to argue with the opposing side. This is the time to impress the Judge with your logic and you will not do this by showing the Judge how easily you lose your temper.

Protocol. If you are going to give the Judge copies of something, you must give a copy to the other party as well. Never leave the table. If you want to give the Judge a copy of a document, give it to the Bailiff and he will give it to the Judge.

Concluding. All parties should clearly state what they want at the end of their argument. For example, a party who wants guardianship of a minor should say: "In conclusion, Your Honor, I would like

custody of the children until our divorce is final with my husband having visitation every weekend and paying child support as the law requires." Clearly stating what you want helps the Judge make a decision.

Obey all court orders. A Judge's Orders, unless reversed on appeal, are lawful and must be followed even if you don't agree with them. If you ignore a court order the Judge could hold you in contempt of Court.