



# DIVORCE & CUSTODY LEGAL GUIDE

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# Divorce Process



**Step 1:** The divorce process is started by the filing of a “Complaint” for divorce. The Complaint is the legal documentation explaining the reasons why you are seeking divorce and is needed to start the legal process. Either you or your spouse must reside in Nevada for the six weeks prior to filing for divorce. There is no advantage to filing first, but the first to file must personally serve the Complaint, JPI and Summons on to the spouse.

**Step 2:** After receiving the Complaint for divorce, the other spouse has 20 days to file an “Answer” with the Court. An Answer is simply a response to the issues raised in the Complaint.

**Step 3:** After the Answer has been filed, and while the divorce is pending either party may ask the court to order child support, attorney fees, alimony or custody. Temporary Orders may be necessary because it may take the court 6 months to schedule a trial, and there are decisions regarding child support, custody of the child(ren), and possession of the home that cannot wait for trial.

**Step 4:** If the parties have minor child(ren), they must attend mediation through the Family Mediation Center (FMC) to devise a weekly timeshare of the child(ren) as well as decide on who will have the minor child(ren) on which holidays. The purpose of mediation is to develop a parenting plan specifying legal custody, physical custody, and visitation issues. Any custody issues that are not agreed upon will be decided by the judge at trial.

**Step 5:** The court will schedule a Case Management Conference (CMC) to ask about your attempts at resolution and to set a date for a trial to make a decision on any remaining issues.

**Step 6:** If there is information or documents that you need to prove your case at trial then you may conduct “Discovery”. Discovery will consist of 1) Interrogatories - which are written questions to be answered under oath. 2) Requests for Production of Documents - requesting the other party to provide you with needed documents such as bank records or pay stubs. 3) Request for Admissions - which are specific questions that the other party must admit or deny. 4) Depositions - which is an interview of witnesses, and where verbal questions are answered under oath.

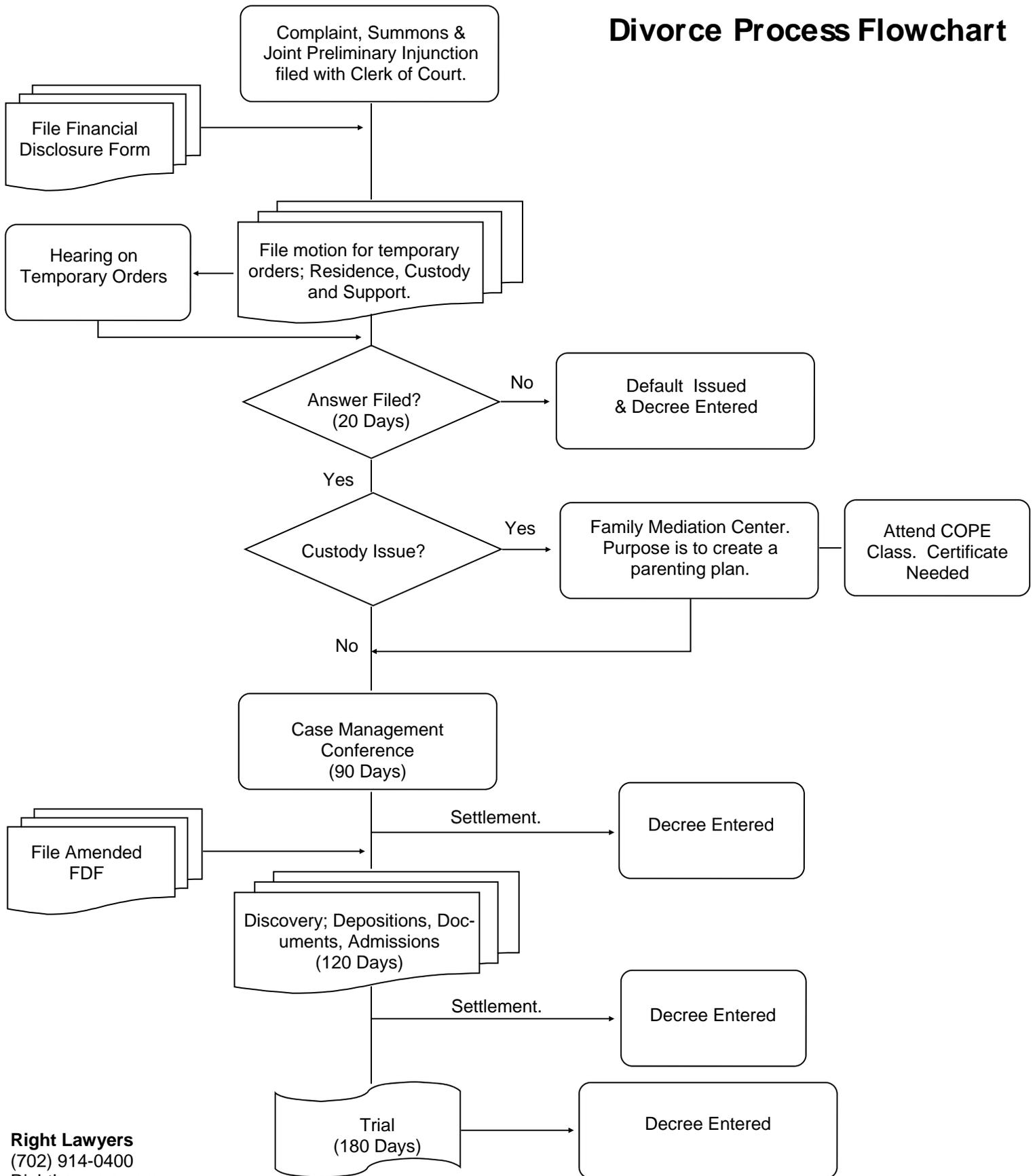
**Step 7:** You do not have to go to trial if you and your spouse can reach an agreement on all outstanding issues. If there are issues that you cannot agree on then you and your spouse will proceed to trial and a judge will make the final decision. At trial you and your attorney will present documents and have witnesses testify. The other spouse will do the same. The judge will then make a final ruling and grant the divorce.

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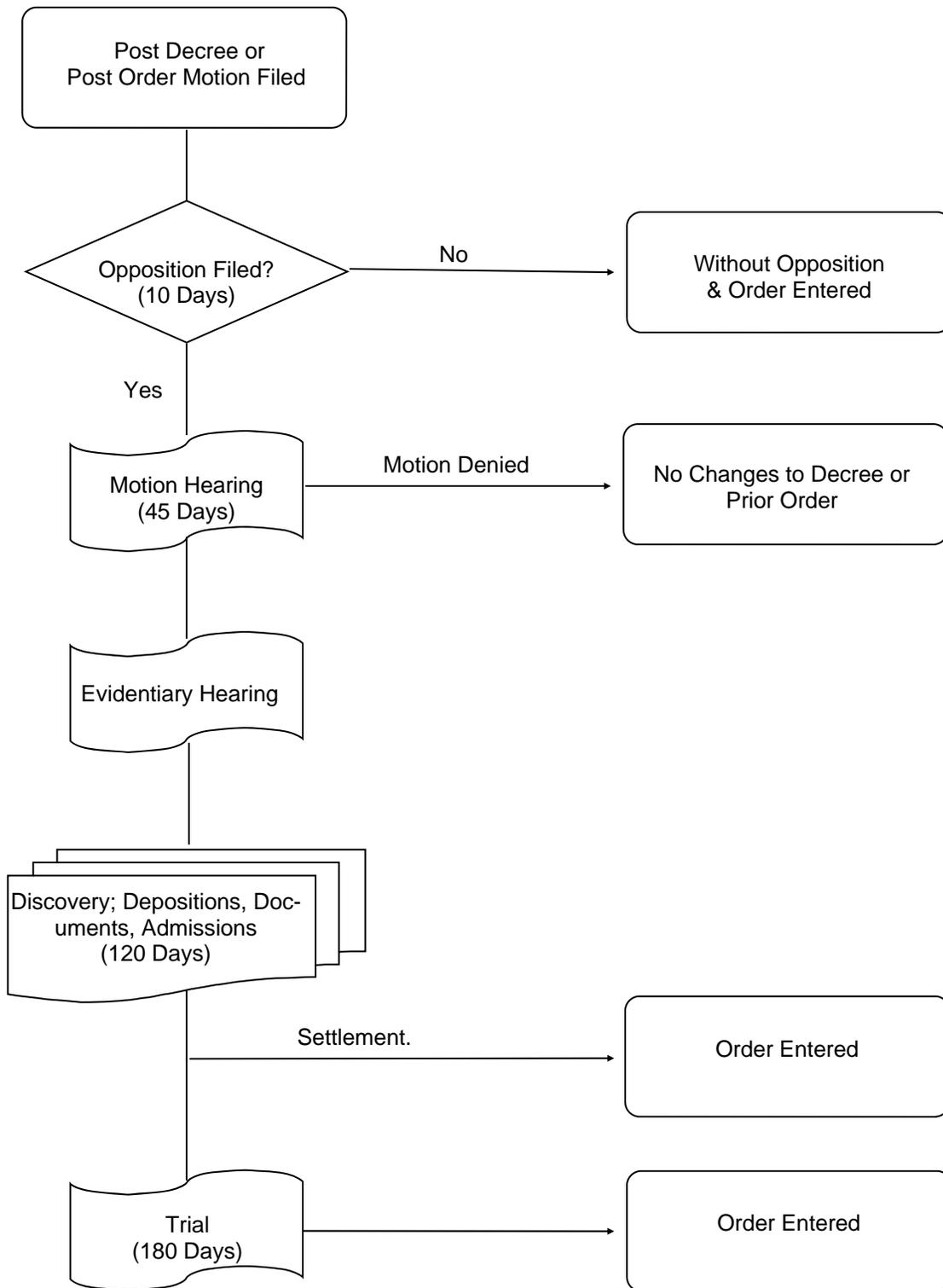
# Divorce Process Flowchart



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# Post Decree Process Flowchart



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# Child Custody Information

Child custody involves two separate concepts: legal custody and physical custody. Legal custody is often confused with physical custody, but it is important to know the difference. Physical custody is where the child(ren) resides, whereas legal custody involves having basic legal responsibility for a child(ren) and making major decisions regarding the child's health, education, and religious upbringing.

## Legal Custody

Sole legal custody gives this right with one parent, while joint legal custody gives this right to both parents. In a joint legal custody situation, the parents must consult with each other to make major decisions regarding the child's upbringing, while the parent with whom the child(ren) is residing with at the time usually makes minor day to day decisions.

## Physical Custody

Physical custody involves the time in which a child(ren) physically spends in the care of a parent. During this time, the child(ren) resides with the parent and that parent provides supervision for the child(ren) and makes the day to day decisions regarding the child(ren). Parents can share joint physical custody, or one parent may have primary physical custody and the other parent would have visitation rights.

In determining the custody of a minor child(ren) the sole consideration of the court is the "best interest of the child". The policy of Nevada is to advance the child's best interest by ensuring that after divorce minor child(ren) have frequent associations and continuing relationships with both parents and to encourage parents to share the rights and responsibilities of child rearing.

To further this policy, the Nevada Legislature adopted laws to educate and encourage parents regarding joint custody arrangements. The laws encourage parents to cooperate and establish a custody arrangement without court. The purpose is to ensure the healthiest psychological arrangement for child(ren) and minimize the adversarial "winner take all" approach to custody disputes.

If you and your spouse cannot agree which parent should have custody of the minor child(ren) the court will make that decision for you by analyzing which arrangement is in the "best interest of the child", taking into account the ability of each spouse to raise the child(ren), what would be the most stable environment for the child(ren), and other factors. Both spouses may be required to submit an evaluation to determine these factors.

The physical custody arrangement is legally important for a few reasons. First, it impacts the procedure if a parent wants to move out of state with the child(ren). Second, the physical custody arrangement affects the child(ren) support award. These rules are complex and constantly changing and it is wise to seek legal counsel on custody issues.

# Child Custody Information



## Differences Between Primary Physical Custody and Joint Physical Custody

Joint physical custody is where both parents have between 41% and 59% physical custody of the child. Parents do not need exactly 50% equal timeshare to have joint physical custody, and it is often difficult to do so, given the variations inherent in child rearing, such as school schedules, sports, vacations, and parents' work schedules.

Primary physical custody is where one parent maintains physical custody of the child(ren) in excess of 60% of the time. Regardless of the "label" placed on the custodial arrangement or in the divorce decree, if a parent has physical custody of the child(ren) in excess of 60% of the time, then the arrangement will be considered by the court as primary physical custody.

## Can Custody Be Changed?

Nevada Courts believe that changing custody can be a traumatic experience for child(ren) and are reluctant to change custody orders. In *Truax v. Truax*, the Nevada Supreme Court ruled that a custody arrangement can be modified from joint to primary if it is in the child's "best interest."

Where there is already a primary physical custody arrangement, the court ruled in *Ellis v. Carucci* custody arrangement should only be changed if it meets a tougher "two pronged test"; 1) there has been a substantial change in the circumstances affecting the welfare of the child, and 2) the child's "best interest" is served by the modification. Under this test, the party seeking a modification of custody bears the burden of satisfying both prongs.

## Can You Relocate To Another State With The Child?

A parent with primary custody, wishing to relocate out of Clark County, will need either written consent of the other parent to move or permission from the court.

When determining whether a parent may move outside the state with the child(ren), the court tends to consider several factors; 1) will the move produce an actual advantage for the child(ren)'s; "best interests"? 2) Are the custodial parent's objectives in moving honorable and in good faith? 3) If allowed to move will the noncustodial parent be able to maintain a visitation schedule to preserve the parental relationship.

Relocation cases can be complex and they are typically the most litigious type of family law cases. Judges do not make rulings in relocation cases without weighing all the factors. Please consult with an attorney about your specific situation.



# Child Support

Child support laws are applicable to all parents, whether or not the parents of the child are married. Child support must last until the child reaches 18 if no longer in high school or 19 if the child is enrolled in high school. Parents of a handicap child may be required to support the child beyond the age of 18 or becomes self supporting.

## How Is Child Support Calculated?

Calculation of child support is based on the number of children and is a percentage of gross monthly income.

One (1) Child .....	18% of gross monthly income
Two (2) Children.....	25% of gross monthly income
Three (3) Children.....	29% of gross monthly income
Four (4) Children.....	31% of gross monthly income

There is a minimum and a maximum amount. The minimum amount per child is \$100 per month and the maximum per child depends on the gross monthly income. The court may deviate from this maximum based on other expenses such as health insurance being covered.

Monthly Income	Maximum Per Child
\$0 - \$4,235 .....	\$649
\$4,235 - \$6,351.....	\$714
\$6,351 - \$8,467 .....	\$781
\$8,467 - \$10,585 .....	\$844
\$10,585 - \$12,701.....	\$909
\$12,701 - \$14,816 .....	\$973
\$14,816 - No Limit.....	\$1,040

Each parent is obligated to pay a percentage of their income, according to the number of children, as stated above and the maximum ranges. Where one party has primary physical custody and the other has visitation rights, the statutory percentage is applied to the non-custodial parent's monthly income.

In cases where the parties have joint physical custody, child support is calculated based on both parents' gross monthly incomes. The difference between the two support amounts is calculated and the higher income parent is obligated to pay the lower income parent the difference.

## Can The Amount of Child Support Be Changed?

A review can be requested if three years have passed since the order for child support or at any time there has been a 20% difference in income(s). Filing for a modification is fairly simple, with the petitioning party filing an updated Financial Disclosure Form (FDF) and including updated paystubs or tax returns to verify the change in income.

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# Spousal Support



Nevada Courts are authorized to award spousal support (often referred to as alimony) to either spouse. The amount of spousal support, if any, may be a lump sum or payments for a specified time frame. The court has been given great latitude and discretion in determining a just and equitable amount and “ability to pay” and “need of income” are the two main legal arguments made.

The basis or grounds for which Nevada Courts have ruled in favor of alimony and the amount of alimony have been extremely situational and varies from case to case. Each judge uses their own discretion after analyzing the need of the person requesting the award against the ability of the other spouse to pay. Your Financial Disclosure Form (FDF) filed with the court will be the main document that the judge reviews in spousal support arguments.

Some of the factors a judge may consider in awarding spousal support:

- Duration of the marriage
- The income and earning ability of each spouse
- The current financial condition of each spouse
- Whether a spouse has obtained greater job skills or education during the marriage
- Whether either spouse has become disabled during the marriage

# Property & Debt



The major distinction when dividing property is determining “Community Property” and “Separate Property.” Community Property is generally defined as all of the property acquired after marriage by either husband or wife, or both. Separate Property is property owned before marriage or that was acquired afterwards by gift, descent, or an award of personal injury damages.

The community shall receive a fair share of the profits from any business owned during a marriage. If a spouse owned a business before the marriage then the growth or profits of the business during the marriage shall be considered community property. It should be noted that retirement accounts like a 401(k), IRA or pension are considered community property to the extent contributed to during the marriage.

When all property has been classified as “Community Property” or “Separate Property” the Court will generally award each party 100% of their separate property and 50% of community property.

Nevada Courts have established that the labor and skills of a spouse are considered to be a community asset and that income generated during the marriage from such labors and skills is considered community property.

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## Commonly Asked Questions

### **Q: How does a Court divide retirement accounts and pension benefits?**

**A:** Under Nevada law, each spouse is entitled to one half of the community interest of the other spouse's pension or retirement benefits. The court will order a QDRO (Qualified Domestic Retirement Order) which will calculate the value of the community interest of the spouse's retirement and pension benefits.

In situations where both spouses have maintained their own retirement or pension benefit plans throughout the marriage, and if the values are approximately equal, the spouses may agree to each keep their own benefits upon divorce, and forego their share of community interest of the other spouse's retirement or pension plans.

### **Q: When divorced, who pays the debts like credit cards and student loans?**

**A:** Generally, any debt that either party has accumulated before the marriage is considered "separate debt" and the court may not hold the other spouse responsible for separate debt. Debt that a married couple accumulates after the date of marriage is considered "community debt" and the court will order both parties to pay it equally.

### **Q: How much spousal support (or alimony) will I pay or receive?**

**A:** The court has the discretion to award "just and equitable" alimony to either spouse. There is no exact formula under Nevada law to calculate a certain award of spousal support. The court is obligated to analyze a range of factors when setting an alimony award. Common factors weighing into this analysis are the length of the marriage, the need of the spouse requesting alimony, and the financial ability to pay of the other spouse.

### **Q: How much will a divorce cost?**

**A:** The cost of your divorce is highly dependent on the complexity of your case. Most cases range between \$2,500 and \$4,000 but some cases are less and others are considerably more. The best way to determine an estimated range of fees is to schedule a consultation with an attorney.

At the consultation, be prepared to discuss past events leading up to the divorce, as well as concerns and goals for the representation. After assessing your case, the attorney will help you complete a litigation budget. The budget helps prepare for the cost of your divorce action. Keep in mind that cheapest is not always the best and you often get what you pay for.

### **Q: Can I have my attorney's fees reimbursed by my ex-spouse?**

**A:** There are several laws and Nevada statutes which authorize judges to award attorney's fees to either party. These awards can be granted during or at the completion of the trial. Whether you are eligible for fees will depend on the details of your case.

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## Commonly Asked Questions

### **Q: Is It true whichever spouse makes more money usually gets custody?**

**A:** Custody is mainly based upon the best interest of the child(ren). The inability of a party to keep a job may relate to a parent's stability, but if the parent is able to adequately provide for the child the income will typically be a non-factor in the courts' final decision.

### **Q: How do I collect unpaid child support?**

**A:** There are two ways to collect unpaid child support owed to you; 1) You may open a case with the District Attorney's (DA) office or 2) You may file a motion in Family Court. The court will reduce the unpaid child support amount to a judgment against the obligor, upon which you can start collection proceedings.

The DA's office is the official enforcement agency for collecting unpaid child support payments and will take actions to calculate the amount owed, find the obligor, request payment and forward a wage garnishment order to the obligor's employer, intercept the obligor's income tax refund or levy his/her bank accounts if necessary.

### **Q: Can I or the children stay on my ex-spouse's health insurance plan?**

**A:** In most instances an employer will allow the child(ren) to stay on company insurance plan but will only allow the ex-spouse to stay enrolled using COBRA. COBRA laws provide an ex-spouse certain rights with regards to health coverage. Check with the employers Human Resources department for more information regarding your COBRA rights.

If there are minor child(ren), a judge may not grant a decree of divorce without provisions in the decree clarifying who is to cover the medical expenses for the minor child(ren). In the absence of extraordinary circumstances, parents typically equally divide medical expenses for the minor child(ren).

### **Q: Can I make my spouse move out of the house before the divorce is final?**

**A:** If you experience any kind of abuse or domestic violence from your spouse, or if you believe that you are in imminent danger, you should take appropriate steps to protect yourself and obtain a restraining order against your spouse as soon as possible. If such restraining order is approved by the court, your spouse would not be allowed to reside in the residence.

In absence of domestic violence or abuse, and if both spouses own the marital residence or if the spouses are jointly responsible for the payment on a lease, the court may not grant any requests for exclusive possession of the marital residence before the divorce is final.

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# Commonly Asked Questions



## **Q: If asked to move out, should I move, and will I lose my right to see the children?**

**A:** Whether you should move out of your residence depends on a number of factors, some of which includes your finances, and whether you feel its necessary to preserve your safety. If you choose to move this should not have any impact on your right to see your child(ren).

Unless your moving was due to a domestic violence situation, your decision to move should play a minimal role in the ultimate custody or visitation decision of the court. If you decide to move make certain that you continue visitation with the child(ren). Moving out and not visiting with your child(ren) may have a impact on your future visitation rights. A parent cannot deny you visitation with the child(ren) simply because you move out.

## **Q: My spouse was unfaithful. Will this have an effect on child custody?**

**A:** Nevada is a no fault state and unless a parent's extra-marital relationship or life style is dangerous, or negatively impacts the child's well-being, an affair is typically irrelevant when deciding custody.

## **Q: How does the Court decide child custody?**

**A:** Parents are mandated to attend mediation to negotiate a parenting plan which should specify in detail how the parents will share their time with the child(ren) and their responsibilities of raising the children. If you and your spouse cannot agree on the physical custody arrangement of your child(ren), the judge will make the final determination.

In determining custody of minor child(ren) the sole consideration of the court is the "best interest of the child" and starts at "joint" physical and legal custody. The underlying goal of this policy is to encourage both parents to continue to equally share the rights and responsibilities of child rearing. In cases where a or joint physical arrangement of the child(ren) is not possible, the court will make a decision on who will have primary physical custody of the child(ren).

## **Q: Can I relocate with my child out of Nevada?**

**A:** A parent may relocate outside of Nevada with the minor child(ren) if he or she obtains written consent from the other parent. If the other parent refuses to give consent, then the parent must petition the court for permission to move.

Moving with the child(ren) without obtaining either written consent from the other parent or permission from the court will have grave consequences on the custody of your child(ren). The other parent may file kidnapping charges and you may be ordered by the courts to return the child(ren) to Nevada.

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# Definitions

**Affidavit of Service** - A sworn statement that certifies the delivery of a summons, notice, or order to a person, by stating the time and manner in which the paperwork was given to the party.

**Affidavit** - A written statement used in court proceedings that a person swears under oath before a notary public. Common affidavits used in divorce or family law are "Affidavit of Resident Witness" and "Affidavit of Plaintiff in Support of Temporary Orders."

**Alimony** - Sometimes referred to as spousal support. Alimony is income paid from one spouse to another spouse in periodic payments or sometimes in a lump sum. Payments are tax deductible to the payer and included in the payee's taxable income.

**Annulment** - A ruling by the court that a "marriage", retroactively, was never legally valid or is void.

**Answer** - The Answer is the paperwork, or Pleading, filed by a defendant as a response to a Complaint filed in a lawsuit. An Answer responds to each allegation in the Complaint by denying or admitting it. Defendants must file an Answer, and include a Counterclaim, within 20 days of being served the Complaint.

**Appeal** - An appeal is a review by Nevada's Supreme Court of a lower court's ruling. Appeals are not automatic and after the lower court's judgment, the moving party (appellant) must file a notice of appeal request.

**Arrears** - Unpaid or overdue debt.

**Best Interest of the Child** - This is the primary legal standard that the Nevada courts use to make decisions regarding child custody or child support. The judge will use this standard in making many of the decisions concerning children in a divorce or family law matter.

**Case Management Conference (CMC)** - A court hearing between both parties, the attorneys, and judge to set a schedule for the trial. The attorneys and judge agree on dates for FMC, Discovery, and a trial date.

**Change in Circumstance** - A change, usually substantial, in the emotional, financial, or physical condition of one or both parents, justifying a modification of a child custody or child support order.

**Child Support** - Payments agreed to, or ordered by the court, to be paid by one parent to the custodial parent of a child(ren). Payments are not tax deductible by the payor parent and not considered by the IRS as Taxable income by the payee parent.

**Community Property** - A label placed on property, assets, or income, which upon a divorce will be equally divided between the divorcing couples. Some types of property such as gifts, inheritance and personal injury awards may be identified as Separate Property.

**Complaint** - A Complaint is the paperwork that initiates a divorce proceeding. The Complaint is filed by the Plaintiff with the Clerk of the Court, identifies the other party and states the claims against the Defendant.

# Definitions



**Counterclaim** - Allegations or claims, if any, that the Defendant includes in their Answer to a Complaint.

**Defendant** - The party in a legal matter that has been sued. The party filing the lawsuit is called a Plaintiff. There is little significance in who is the Defendant or Plaintiff. Both the defendant and the plaintiff are provided equal opportunity to present their case to the court.

**Depositions** - A formal questioning of parties or witnesses. Used for information gathering, depositions allow an attorney to ask questions of which the answers can be used at the hearing in a trial.

**Discovery** - Is the process of gathering information and evidence to present during trial or a hearing. The primary discovery methods are 1) Depositions 2) Interrogatories 3) Request for Production of Documents 4) Request of Admissions. Discovery deadlines are scheduled at the Case Management Conference.

**Divorce Decree** - The paper signed by the judge which details the final determination of all matters disputed in a divorce proceeding.

**Ex-parte Communication** - A motion or request made by one party to the judge without including notice to the other party.

**Ex Parte Motion** - Ex Parte means without notice to the opposing party. Standard motions are served upon the opposing party and or opposing attorney. An Ex Parte Motion is sent directly to the judge for a decision.

**Family Mediation Center (FMC)** - Under Nevada Law every legal matter where the parenting plan involving a minor child, under the age of 18, is unresolved shall be ordered to attend mediation in an attempt to reach an agreement on the Parenting Schedule.

**Filing** - A term used to describe the submitting of a legal document to the Clerk of the Court.

**Guardian** - A person who is legally responsible for the care and management of the person or property of a minor or incompetent person.

**Interrogatories** - A document used during Discovery containing questions regarding the case. You are required to answer the questions to the best of your knowledge and return your answers to the opposing party of the opposing attorney.

**Joint Petition** - When both parties agree to all issues such as child custody, child support, and property division they may apply to court jointly for the court to dissolve the marriage. A joint petition is quicker and simpler than a contested divorce.

**Joint Preliminary Injunction (JPI)** - A document filed with the Complaint and Summons that warns both parties and Orders both parties not to take certain actions during the divorce proceeding. Typical warnings include that neither party can sell, encumber, or destroy community property.

**Legal Custody** - One of two types of custody that are determined in a child custody matter. Legal Custody is the authority to make decisions regarding a child's' healthcare, education, and religion. Joint custody means the parties share in these decisions.

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# Definitions

**Marital Settlement Agreement** - A legally binding agreement settling all matters pertaining to a divorce. Typical agreements decide each issue such as property, child custody, child support, alimony and other issues that a court would decide before issuing a divorce decree.

**Mediation** - A method of dispute resolution involving a neutral third party who tries to help the disputing parties reach a mutually agreeable solution.

**Minutes** - The documentation of conversations and proceedings that are registered by a court reporter in court.

**Motion** - A formal request made to a judge for an order or judgment. Most motions require a written petition, a written brief of legal reasons for granting the motion (often called "points and authorities"), written notice to the attorney for the opposing party, and a hearing before a judge. When a Motion is filed and served, the opposing party has ten days to respond by filing an Opposition.

**Nevada Revised Statutes** - The written laws of Nevada developed by state legislatures. NRS statutes regarding divorce or family law matters in Nevada are covered in NRS Chapters 122 thru 130.

**Opposition** - An opposition is a document filed in response to the opposing party's motion. The opposition provides the judge an opposing version of the facts and issue.

**Order; Court Order**- A document signed by the judge detailing the final decision regarding the legal matters presented to the court. Anyone who violates the court order could be held in contempt of court.

**Parenting Schedule or Parenting Plan** - A schedule detailing the dates and times regarding which parent the child(ren) will reside. The plan may also provide guidelines and expectations regarding drop off locations, times and schedule exceptions. View typical Parenting Plan.

**Paternity** - The state or condition of being a father. Paternity is verified through a DNA test.

**Petitioner** - The person or agency that initiates a case by filing a petition. Known as the "plaintiff" in other courts.

**Physical Custody** - Relates to the physical location of the child. The types of custody are primary custody, primary custody with visitation, or joint custody. If a child resides with a parent more than 61% of the time then the custody is considered to be at least primary custody with visitation. If the child resides with both parents equally then the custody is considered joint custody.

**Pleading** - The name given to a formal written document filed with a court by parties in litigation such as a Complaint, Answer, Motion, or Opposition.

**Plaintiff** - The party in a legal matter that initiates the law suit. The party being sued is called a Defendant. There is little significance in who is the Defendant or Plaintiff. Both defendant and plaintiff are provided equal opportunity to present their case to the court.

**Pro Se** - Refers to a person representing himself or herself without a lawyer in a court proceeding.

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# Definitions



**QDRO (Qualified Domestic Relations Order)** - A court order directed to the 'plan administrator' or 'custodian' of a pension plan directing them to the amount that needs to be allocated to the ex-spouse.

**Request for Admissions** - Part of the Discovery process. Requests for Admissions are questions that require only a yes or no answer.

**Request for Production of Documents** - The opposing party, or opposing attorney, may request copies of documents in a parties possession. Typical documents requested may include bank account statements, retirement account statements, and medical records.

**Retainer** - A term commonly used to define a deposit of money placed with the attorney for services. When the client hires the attorney, the attorney will request a deposit or "retainer" to cover the cost of legal services. As the law firm performs work on the client's case, the cost of the legal services are charged against the "retainer".

**Separate Property** - Property not considered part of the marital estate, and therefore not divided in divorce equally. In Nevada an inheritance, gift, a personal injury award, or property purchase before the marriage may be separate property.

**Service; Service of Process** - The legal process of delivering to the opposing party legal notices such as a Complaint, Summons, or Motion. There are specific rules of who and what is considered proper service. An Affidavit that certifies the service of a legal document will state the date, time, and manner in which the document was served.

**Stipulation; Stipulated and Order** - A written agreement reached by the parties or attorneys that documents an agreement. Stipulations can be made on an issue as simple as moving of a court date, or one as large as a child custody settlement.

**Summons** - The court's official notice to the Defendant that he/she is being sued and must respond to the attached Complaint or Motion within a certain time period.

**Temporary Orders** - A final divorce decree or order from the judge may take months and some issues need a quicker resolution. Temporary Orders are entered by the court and will remain in place until both parties settle the case or when a final order has been determined by the judge. Typical temporary orders are made in regards to sale of a marital home, amount of temporary child support to be paid, a temporary parenting schedule, etc.

**Temporary Protective Order (TPO)** - A person may apply to the court for an order to prevent another person from stalking and harassing.

**UCCJEA** - Uniform Child Custody Jurisdiction and Enforcement Act is a federal law adopted to handle jurisdictional issues that arise when parents of a child(ren) who live in different states are looking for a court to handle a divorce or custody legal matter.

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This guide is not intended to be legal advice nor does anything submitted herein create an attorney-client relationship. Furthermore, the information contained herein is believed accurate as of the time it was produced. The information and laws may have changed since the date of publication. The answers here are general in nature. Please consult with an attorney for specific legal advice on your situation.