



# Divorce Guide

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DIVORCE & CUSTODY ATTORNEYS

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Whether you are contemplating a divorce or your spouse has already filed, spend a little time familiarizing yourself with the divorce process. Understanding your legal options can make this emotionally charged ordeal easier.

Before we explain the divorce process, you need to know the types of divorce and the areas of a divorce. There are two ways to divorce, uncontested or contested. There are five areas to resolve in a divorce: child custody, child support, division of debts, division of assets, and spousal support.

## **Two Ways to File a Divorce**

Divorces can be either contested or uncontested. Uncontested is when both you and your spouse agree to all the terms of the divorce and file basic paperwork (called a Joint Petition) with the court. Uncontested divorces take between 30 and 45 days to finalize. They are the fastest and cheapest way to get a divorce.

If your spouse will not sign uncontested divorce papers, then you can still get a divorce. A contested divorce is where you and your spouse don't agree on all the terms of the divorce. In this case, a complaint for divorce is filed with the court in order to start the divorce process. In a contested divorce, a judge will make the final decision on any issues the parties cannot agree on. Contested divorces can take 6 to 12 months to finalize.

## **Five Areas of a Divorce**

In both an uncontested and contested divorce, the court is only interested in 5 areas: child custody, child support, division of debts, division of assets, and spousal support (aka alimony). Not every divorce will involve all five of these areas. If you don't have children, you won't need to worry about either child custody or child support. Debts, assets, and spousal support will be discussed in most contested divorces.

# Divorce Process



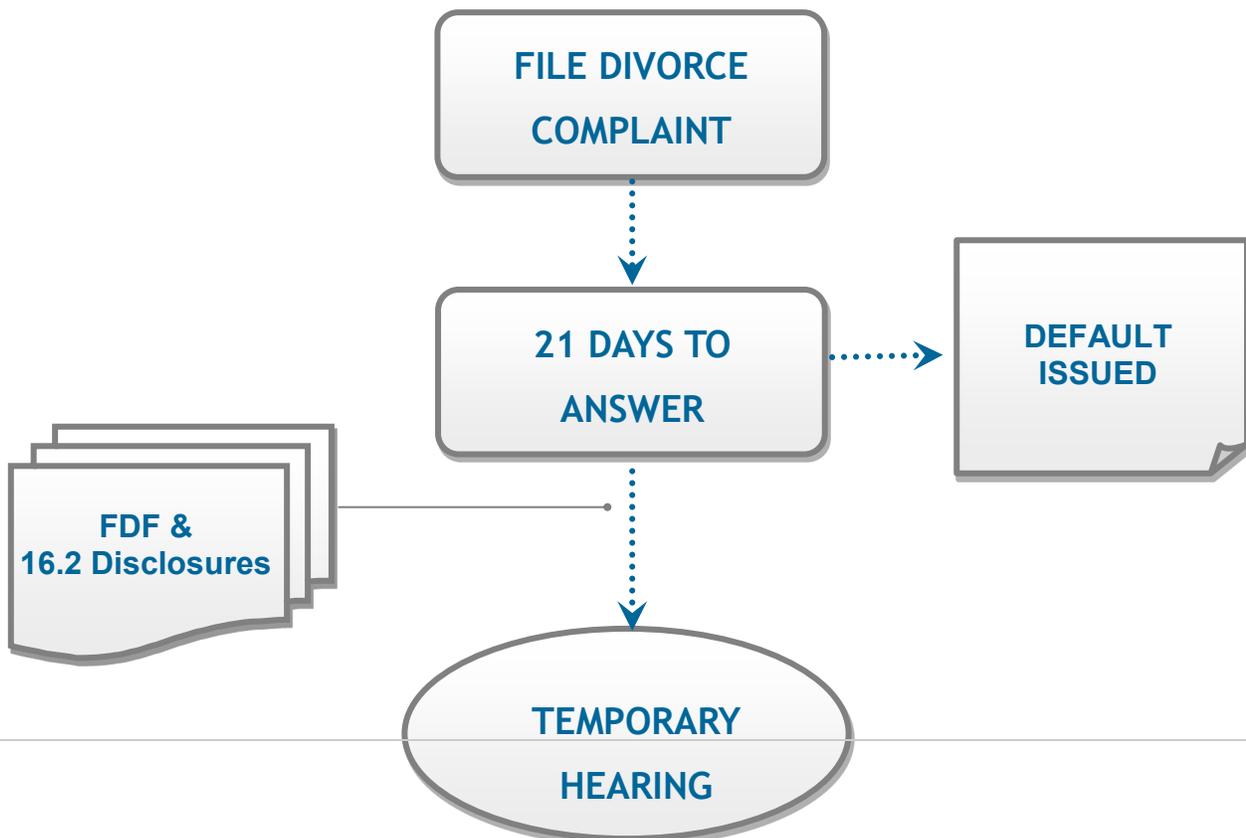
## Part 1: Filing Complaint and Temporary Hearing

You begin the divorce process by the filing a complaint for divorce. The complaint is the legal document asking for the divorce. It describes whether you are seeking child support, property, spousal support, etc. Whomever files the complaint is called the plaintiff. The other party is called the defendant. There is no legal advantage to being either the plaintiff or defendant.

After being served the complaint, the defendant then has 20 days to respond with an answer. This is the legal document responding to the complaint and possibly counter claiming for child custody, support, property, etc.

Both plaintiff and defendant must file a Financial Disclosure Form (FDF) with the court. The court uses this form to make decisions on child support, alimony, assets, and debts.

While the divorce is pending, either party may ask the court for help with support, custody, or exclusive possession of residence. If so, a temporary order hearing may be necessary. We call it temporary because the court's decision only stands while the divorce is pending. It may not be permanent.



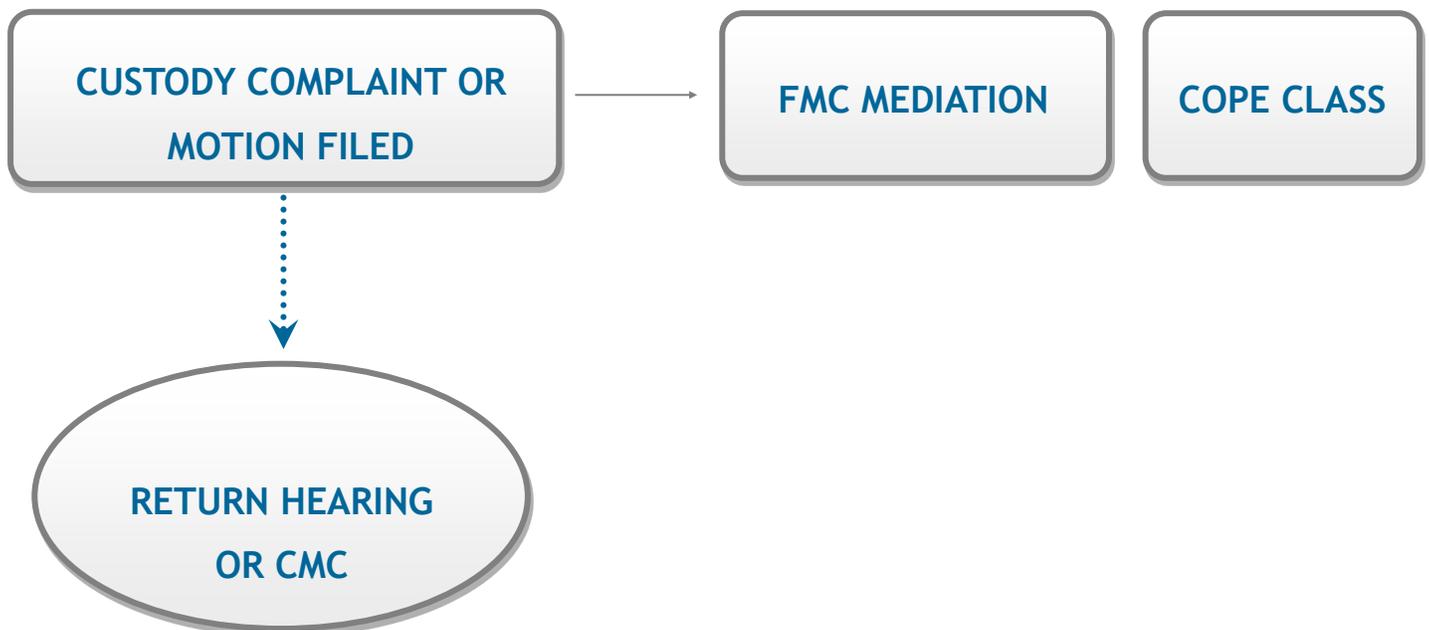
## Part 2: Family Mediation, Case Management Hearing

After the complaint and temporary orders, the next stage is mediation for divorces with children. Mediation is mandatory. Couples will meet with the Family Mediation Center (FMC) where a mediator will attempt to work out a weekly timeshare of the child(ren), set a holiday schedule, and vacation time. The meeting is mandatory, but the mediators cannot force you to accept the terms. Any custody issues not finalized will be decided by the judge at trial.

The court will schedule a Return Hearing to ask about your attempts at resolving the divorce disputes. If there are still disputes, then the judge will open discovery and set a date for a trial.

When parents separate, children have a hard time adjusting. To help lessen the impact on the children, the court requires separating parents to attend a “Cope Class.” In the class, parents learn how to focus on the needs of the children and to work together for the benefit of the child.

The court will also schedule a Case Management Conference (CMC). At this hearing the judge determines the issues still unresolved and sets a trial.

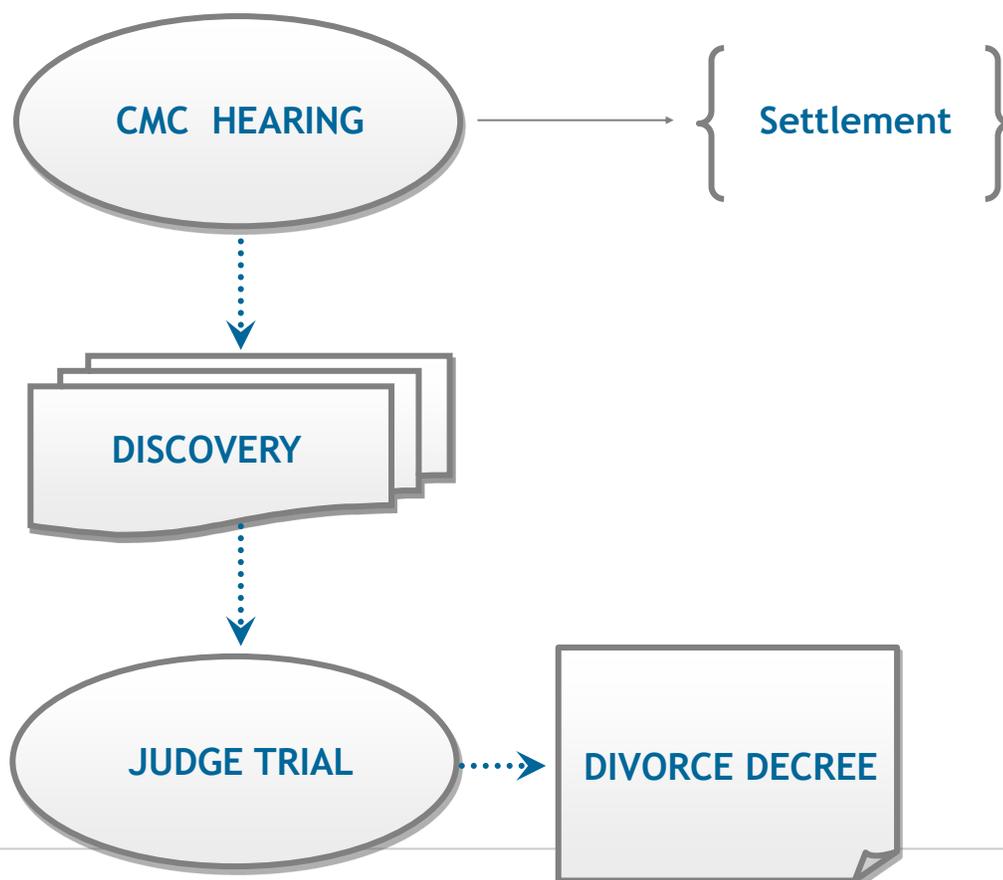


## Part 3: Discovery and Trial

If you need information or documents to prove your case at trial you will need to conduct “Discovery”. Discovery consists of 1) Interrogatories - which are written questions to be answered under oath. 2) Requests for Documents - requesting the other party to provide you with needed documents such as bank records or pay stubs. 3) Subpoenas - legally requesting documents from a bank, school, hospital, etc. 4) Admissions - which are specific questions the other party can only answer yes or no. 5) Depositions - which is an interview where questions are answered under oath.

It is common during this period for both sides to discuss a settlement. If a final settlement is reached then a divorce decree is filed with the court. The filing of a divorce decree will finalize the case. There is no need to go to trial if you settle.

If a settlement is not reached, then you and your spouse will proceed to trial. At trial, the witnesses will testify and your attorney will present all the evidence found during discovery. Your spouse will have the opportunity to do the same. The judge will review all the evidence and then make a final decision.



One of the main areas to resolve is dividing property. Everything from big property like a house, to small property such as furniture, furnishings, and appliances.

In a community property state (like Nevada) all property the couple acquired during the course of their marriage is presumed to be community property and is divided equally between both parties. Property deemed separate property is awarded to the owner of that property and is not divided between the parties.

Community property is typically that which is acquired during the marriage by either spouse or both. When couples divorce, the property among them must be divided.

### **Community Property**

- Homes and Real Estate
- Automobiles or Other Vehicles
- Furniture and Personal Belongings
- Individual Retirement Accounts (IRA's), Pension Plans, and/or 401K's
- Businesses and Business Property

Separate property is the property owned by each spouse prior to entering into the marriage. It may also include such as personal injury awards, gifts, or an inheritance, even if received during marriage.

A dispute may arise when one party claims certain property is his or her separate property and the other party claims it is community property. The divorce court analyzes many factors in order to determine if the property belongs to the community or is the separate property of one of the parties.

Debt is divided the same way as property. You can have "community" debt and "separate" debt. The general rule is debt acquired after marriage is community debt. Although there can be some exceptions to the case, just like assets. Whose name the debt is in doesn't matter.

# Spousal Support



Receiving spousal support, aka alimony, is not guaranteed. The court has complete authority to determine whether spousal support is appropriate in a given situation and, if so, how much and for how long.

Unlike child support, there is no established formula used to determine the amount of alimony. There also isn't a strict rule on whether or not alimony is appropriate in a given situation. Instead it is a subjective determination made by the presiding divorce court judge. The judge will consider a number of factors.

NRS 125.150 states that the Court can award spousal support in any manner it deems to be "just and equitable." The factors the judge will take into consideration when determining the appropriate amount of support include the following:

- The length of marriage
- Overall financial situation of each spouse
- The occupation, present income, and earning potential of each spouse
- Training needs of the receiving spouse
- Standard of living during the marriage

## **Types of Spousal Support**

**Temporary alimony** — A judge orders one spouse to make payments to the other while the divorce is proceeding and before the divorce is finalized.

**Periodic alimony** — The decree may indicate a spouse is required to make payments for a set duration, until the receiving spouse remarries or either spouse passes away.

**Rehabilitative alimony** — A spouse may be required to provide financial support while the receiving spouse engages in career training or education.

Currently, Nevada does not have a spousal support formula. Each case is different, and each judge looks at spousal support figures differently.

**Q: What is the difference between divorce and legal separation?**

A: A divorce is a complete dissolution of the marriage. A legal separation legally divides the assets and debts of the couple, but they are still married.

**Q: What is the difference between a Joint Petition and Uncontested Divorce?**

A: For all intents and purposes, they are the same. A Joint Petition is a specific group of forms used for couples to file a divorce without a court hearing. A Joint Petition can be considered an "Uncontested Divorce". You can get an uncontested divorce without filing Joint Petition forms.

**Q: What needs to be decided in a divorce?**

A: There are 5 general areas which need to be resolved in a divorce: 1) Child Custody, 2) Child Support, 3) Division of Debt, 4) Division of Property, and 5) Spousal support.

**Q: Do I need a reason to file the divorce?**

A: In Nevada it is only necessary to show the court you and your spouse have irreconcilable differences.

**Q: How long does a divorce take?**

A: Uncontested divorces can take between 30 and 60 days. Contested divorces take between 6 and 12 months.

**Q: Should I file first?**

A: Filing first is rarely a significant advantage. Filing first may allow you to slightly control the flow of the divorce and allow you to choose court jurisdiction if your spouse lives in another state.

**Q: How much does a divorce cost?**

A: Uncontested divorces cost between \$1,500 and \$2,500. Contested divorces average \$5,000 to \$7,000. Seriously contested divorces can cost as much as \$20,000 or \$40,000. The costs depend on time invested into the case as well as how quickly the issues can be settled. During a consult, an attorney will an estimate of the costs for your divorce.

**Q: Can I have my attorney's fees paid by my 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.

**Q: Can we file paperwork ourselves?**

A: Yes, you can file paperwork without an attorney. It is not advisable in many situations. In our opinion, the only reason to handle the paperwork yourself is when there are no children, and no assets or debts to divide.

**Q: One of the spouses cheated, does the court care?**

A: No. Nevada is a no-fault state and courts do not care about infidelity.

**Q: My name is on the house, can I change the locks?**

A: Probably not. You are not allowed to lock out your spouse without a court order. The courts understand divorcing couples may find it hard to cohabitate. This issue is usually solved after a divorce has been filed at a Temporary Orders Hearing. At this hearing the court can order one spouse to vacate the house.

**Q: Do we have to sell the house?**

A: You first need to first determine if it the house is separate property or community property. If it is separate property, it will likely be awarded to one spouse. If it is community property, then one spouse must pay to the other party one-half of the equity in the house or the house will be sold and the proceeds divided equally. If the house has no equity, or is upside down, one spouse may be able to keep the home without any payment to the other, but may still have to refinance the other spouse off the loan.

**Q: What is community property?**

A: Community property are any assets which have been accumulated during the marriage. Examples would be a home, cars, savings accounts, 401(K), and pensions.

**Q: Is an inheritance community property?**

A: No, inheritance is separate property. However, we have found couples often turn separate property into community property when they add the spouse's name to the property.

**Q: What do we do with debts?**

A: Debts are treated just like assets. If they are community then they are divided equally. There are situations where a debt may be a separate debt, such as a student loan.

**Q: Do I really need to divide my 401(k)?**

A: All the money you deposited into your 401(K) during the marriage is community property. This would mean your spouse is entitled to half of those deposits and any appreciation.

**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.

**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 looks at 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 the other spouse. Some attorneys would say a good ballpark is one-quarter to one-third of the differences of the income for half the years you have been married. However, this is an extremely rough estimate. Each case can vary.

**Affidavit of Service** - A sworn statement that certifies the delivery of a complaint, 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.

**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 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.

**Arrears** - Unpaid child support or spousal support.

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

**Case Management Conference (CMC)** - A court hearing between both parties, the attorneys, and judge to set a schedule for the trial.

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## Definitions



**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 ordered by the court, to be paid by one parent to the custodial parent of the child(ren). Payments are not tax deductible by the payor parent and not considered by the IRS as taxable income to the payee parent.

**Community Property** - A label placed on property, assets, or income accumulated during the marriage, which upon a divorce will be equally divided between the divorcing couple.

**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.

**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 family law 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 for impeachment.

**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.

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**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)** - Each divorce involving a minor child will be ordered to attend mediation in an attempt to reach an agreement on the parenting schedule.

**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 or the opposing attorney.

**Joint Petition** - Forms outlining the couples agreement to all issues such as child custody, child support, and property division. 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 not to take certain actions during the divorce proceeding. Typical warnings include 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 legal custody means the parties share in these decisions.

**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.

**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

## Definitions



a judge. When a Motion is filed and served, the opposing party has ten days to respond by filing an Opposition.

**Nevada Revised Statutes (NRS)** - 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 through 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 issues.

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

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

**Physical Custody** - Relates to the physical location of the child. The types of custody are sole custody, primary custody with visitation, and 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, or Counterclaim.

**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 in family court. Both defendant and plaintiff are provided equal opportunity to present their case to the court.

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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 the divorce. In Nevada an inheritance, gift, a personal injury award, or property purchased 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 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 within a certain time period.

## Definitions



**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)** - Where there is domestic violence, an order from the court for one spouse to not contact, or be within 100 yards of the other spouse.

**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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