

FIREMAN DIVORCE GUIDE



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Divorce & Custody Attorneys

rightlawyers.com - (702) 914-0400

Purpose of this Guide

Although going through a divorce is tough on everyone, a firefighter's divorce poses challenges that are unique to the profession. Three common unique issues arising are (1) child custody because of non-traditional work schedule, (2) pension considerations, and (3) spousal support based on overtime.

This guide is not intended to be a substitution for legal advice. An individual's situation will vary from case to case, and the best strategy will differ from case to case. This guide is general information only.

This guide will discuss four myths unique to firefighters. The first myth is all divorces are world war three. The next myth is mothers always win custody of the child. Then we discuss myths regarding a fireman's pension and myths around spousal support.

Myth 1 - All Divorces are World War III

- Uncontested versus Contested

Myth 2 - Mothers Always Get Custody

- Types of custody
- What are the "Best Interest Factors"
- Sample custody plans for fireman

Myth 3 - Pensions Are Not Dividable

- Pensions are community property
- Court will divide community property equally
- Strategies for protecting your pension

Myth 4 - Alimony Is Forever

- There is no concrete formula for alimony
- How overtime factors into alimony

Divorce Myth – Not all Divorces are World War III

Contested or Uncontested Divorce

Not every divorce goes to court. There are two types of divorce in Nevada, contested and uncontested. An uncontested divorce means that both spouses agree to all the terms of the divorce. There may be some negotiation at the outset, however, both parties have ultimately reached an agreement. Uncontested divorces do not go to court.

An uncontested divorce is the fastest, easiest, least expensive way to divorce. An uncontested divorce can be done in two weeks and might cost between \$1,000 to \$2,000 in attorney fees and court costs.

Filing an Uncontested Divorce

To file an uncontested divorce, you and your spouse need to agree on three main areas: 1) dividing assets, 2) child custody, and 3) spousal support. If you agree to these areas a few documents are signed and the divorce is finalized.

If you cannot agree to the terms, then you have a contested divorce. With a contested divorce one party will file the divorce and serve the other spouse with the divorce complaint. Evidence is collected, presented to the judge, and the judge makes the final decisions. A judge will make final decisions about dividing assets and debts, child custody schedules, and calculating child support or spousal support.

Dividing Assets

Nevada is a community property state. Community property generally includes all assets and debts earned or acquired during the marriage, regardless of whether the spouses are named on the asset or debt. Community property states view both spouses as equal partners in everything acquired.

It doesn't matter who worked or who earned the money. Community assets include, but are not limited to income of both spouses, real property, vehicles, bank accounts, retirement accounts, investments, and pensions. Absent a "compelling reason" the court will divide the assets and debts equally between the spouses. Community debts are treated the same way as community assets. They are divided evenly.

A spouse may have separate property. Separate property is any property owned before the marriage, property acquired by gift or inheritance during the marriage, or any award to a spouse

for personal injury damages. Separate property will be excluded from division and will be confirmed to that spouse.

Child Custody

If spouses have children together, then child custody must be decided in a divorce. The two components of child custody are legal custody and physical custody. Legal custody refers to the power that parents to make important decisions affecting a child, e.g. educational, medical, and religious decisions. Generally, the court will award both parents joint legal custody of the children.

Physical custody refers to the amount of time the children actually spend with each parent. In Nevada, the parents will have joint custody if there is anywhere between a 50/50 to 60/40 split in time the children spend with each parent. If a parent has at least 146 days of custody of the child each year, then they have joint physical custody.

Nevada has a presumption that joint physical custody is in the best interest of the children. This means that the court will award the parents joint custody unless there are strong reasons to do otherwise.

Spousal Support

Spousal support is the monthly payments a court orders one spouse to pay the other after a divorce. Also called alimony, spousal support is not always awarded. It is most common in long term marriages, and where one spouse earns much more than the other.

There are three types of spousal support: temporary, rehabilitative, and periodic. Temporary spousal support is awarded on a temporary basis during the divorce proceeding and ends upon the entry of decree. Rehabilitative support is a set amount of money paid to a party to assist them with obtaining job skills. Periodic alimony is monthly payments made after the Decree of Divorce is entered.

Divorce Myth – Mothers always Get Custody

There are several issues to keep in mind while working out a custody schedule.

First, the state will not award a mother primary physical custody just for being the mother. Second, the court will not award the other parent primary custody just because you work an irregular schedule. Third, Nevada public policy prefers both parents to be equally involved in the child's life.

When determining custody, the court looks at the Best Interest of the Child. There is a preference for joint custody. A parent seeking primary or sole custody has a high burden to show primary custody is in the best interest of the child. This is not always an easy task.

Factors for Making Custody Decisions

The most important thing the court considers is the child's best interest. That includes the child growing up in healthy and safe conditions. It also includes maintaining quality relationships with both parents. Judges will review a list of best interest factors when making custody decisions. These include but are not limited to:

- Schedule being exercised since any separation
- Domestic violence by either parent
- Mental and physical health of each parent
- History of substance abuse by either parent
- Ability of each parent to cooperate with the other

Contrary to urban legend, these factors do not favor the mother. You do not get primary custody in Nevada for simply being a mother. A parent gets primary when the factors dictate so.

48-96 Custody Plan

To have joint custody a parent must exercise 146 days of custody each year. A standard custody schedules could be 4 days one week and 3 days the next week. Or maybe a week on and a week off. These standard schedules presume a 9 am to 5pm type job. Because a fireman can work 24 hours straight these standard custody schedules don't apply.

Many fireman in Southern Nevada operate on a 48-96 schedule. With a 48-hour working and then 96 hours not working. With a 48 - 96 schedule the courts look to a 3-3 schedule.

Starting with the first day the fireman works, the other parent will have custody for three days in a row. Then the fireman will have three days of custody. The three days of alternating custody repeats.

Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
Work 	Work 	Off 	Off 	Off 	Off 	Work 
Work 	Off 	Off 	Off 	Off 	Work 	Work 
Off 	Off 	Off 	Off 			

Using the above calendar as an example, assume the fireman’s shift starts on Monday. The other parent will have custody from Monday through Wednesday. (Green circles.) The fireman will have custody from Thursday through Saturday. (Red circles.) The three-day schedule is repeated. If exchanging every three days is too burdensome or frequent the court may order a 6 – 6 schedule.

5 - 6 Schedule

Another typical fire schedule used is the 5 - 6. The fireman works every other day for five days and then is off for six straight days. This schedule is a little more difficult because the court may not want to have the children exchanged every other day. The alternative is to give the fireman six days of consecutive custody. This a basically a week on week off schedule.

Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
Work 	Off 	Work 	Off 	Work 	Off 	Work 
Off 	Work 	Off 	Off 	Off 	Off 	Off 
Off 						

The bottom line is a fireman’s 24-hour work schedule can be accommodated with a little creativity. And because the schedule is known in advance the court has a map to work custody around.

Family Mediation Center

Parents are encouraged to draft their own schedule. So much so that even before a judge can order a schedule, both parents will be required to attend the Family Mediation Center (FMC).

At FMC both parents will meet with a licensed social worker or mediator who will help craft a custody schedule. The goal of mediation is for the parents (with the help of an experienced mediator) to work out their own custody schedule. This is a better choice instead of being told what to do by a judge.

Co-Parenting Class

In addition to mediation, the court will require that you complete a COPE class before your divorce can be finalized. COPE is a co-parenting class. It focuses specifically on how to co-parent with your spouse and help your child through your divorce in the healthiest way possible.

The main goals of COPE are to:

- Teach parents how to focus on your child's needs
- Understand the divorce from your child's point of view
- Help your child deal with the stress of the divorce
- Develop successful co-parenting strategies you and your ex can use
- Maintain a healthy parent-child relationship through and after the divorce

You can take the COPE class either online or in person. The cost is \$40 and takes 3 to 5 hours. You and your spouse do not need to attend the class together.

Divorce Myth – Pensions are Separate Property

Protecting a pension is one of the biggest concerns we see. It is an understandable concern. After all, your pension is one of the main benefits of being a fireman.

The problem is that Nevada is a community property state. Everything earned during the marriage will be divided evenly between the spouses during a divorce. This includes a 401K, an IRA, deferred comp, and a pension.

How Courts Split Assets

The first thing to know is, Nevada is a community property state. Community property is the property that both spouses acquire during a marriage including physical property, savings, and retirement accounts.

When two parties divorce in a community property state, all property acquired during the marriage is considered owned by both spouses. In a divorce all community property is split evenly. Everything you put into your pension before you got married is yours. Everything after the marriage date belongs to both of you, equally. Anything after the divorce is yours.

It doesn't matter who financially contributed or whose name is on the account. The idea is that both spouses contribute equally to the upkeep of the marriage. Even if one spouse financially contributes more, or one spouse doesn't work at all. The law is that both spouses will equally share in the community property

Let us look at a simplified example. You had \$5,000 in your IRA before you got married. You contributed \$10,000 over the course of your marriage. The \$5,000 before the marriage is separate property and not divided in a divorce. The \$10,000 contributed during the marriage is community property and will be divided evenly.

Pension Time Rule

Commingling is when separate assets are mixed with community assets. For example, you deposit money earned during the marriage into a savings account you had before the marriage. The money before the marriage is separate property and is yours. But, deciding which dollar is separate property and which dollar is community property can be challenging because the money has been mixed, or commingled. Separating commingled money requires tracing by a forensic accountant.

The same thing can happen with a pension. You may have earned part of your pension before getting married. Now after 10 years of a marriage you need to know how much of your pension is separate property and how much is community property.

The court has a process for deciding how much of the pension is separate property and how much is community property. It is called the Time Rule. The court adds a ratio to your pension based on the total number years married and the number of years you earned a pension. For example, if you were married 8 years and earned your pension over 20 years, then only 8/20 (or 40%) of your pension is community property.

Strategies for Keeping Your Pension

If you have the ability to negotiate or mediate, there are common strategies to negotiating your pension; 1) Each spouse can keep their own retirement accounts, 2) trade a known asset for the unknown pension, 3) offer the “spousal beneficiary” election in return for a greater percentage.

If your both you and your spouse have been earning a pension or adding into a retirement account, you might suggest each spouse keeps their own pension, IRA, or 401(k). This option is easier because dividing pensions requires special court documents called a Qualified Domestic Retirement Order (QDRO). With each spouse keeping their pension, a QDRO is not needed.

Look at trading something of equal or more value for your pension. You might offer your spouse 70% of the equity of the home to keep your pension. Or maybe offer your spouse 60% of your deferred comp to keep your pension. Sometimes this makes sense because you are trading a known amount (the equity in the home) for a future unknown amount (a monthly payout from a pension).

At retirement you may elect the spousal beneficiary option. This reduces your monthly pension amount in exchange for the monthly payment continuing to be paid to your spouse after your death. The fireman has the option to elect this or not. Offer to elect the spouse beneficiary in exchange for a greater percentage of the pension. This gives you more of the monthly payment while giving your spouse security of the payment if you were to pass away.

Divorce Myth – Alimony is Forever

Alimony in Nevada gets messy because there is no formula for calculating amount or duration. Whether to award alimony, how much to award and how long it should be paid is entirely in the hands of the judge. Alimony comes down to how a judge views factors related to what is “just and equitable.”

Alimony is not guaranteed. The judge will look at several factors to determine whether alimony is warranted. The main factors are:

- Duration of the marriage
- Standard of living during the marriage
- Financial condition of each spouse
- Current income
- Earning capacity
- Age and health
- Any specialized education or training during the marriage
- Value and amount of community property each spouse is receiving

“Economic Need” and “Ability to Pay”

“Economic need” and “ability to pay may” are the two biggest factors. The court doesn’t want a spouse to be destitute, but it can’t force someone to pay something they can’t afford to pay.

The economic need of one spouse gets balanced by the other spouse’s ability to pay. The economic need of both spouses is not limited to the minimum basics of shelter, food, and bills. Disposable income gets taken into account as well, particularly if the standard of living pre-divorce was moderately high and provided significant discretionary spending.

The goal is to keep the spouses on as equal a level as possible post-divorce. It would be unfair for one spouse to live the high life after the divorce while another has to request government assistance.

Types of Alimony

There are three types of alimony in Nevada; temporary alimony, rehabilitative alimony, and periodic alimony.

Temporary alimony is used during the pendency of the divorce. Contested divorces can take months, and sometimes more than a year. During this time a spouse may need income to pay rent, groceries, utilities, etc. Temporary alimony stops when the divorce is final.

Periodic alimony is used after the divorce is final. It is warranted in long-term marriages, usually those of at least five years or longer. Periodic alimony is not always permanent. The court will award a monthly amount along with a number of months to make the payment.

Rehabilitative alimony exists to provide support for job training or other skill acquisition. This type of alimony is used to help the spouse gain skills to earn more income on their own. Typically rehabilitative alimony is directed towards school tuition and books.

Calculating Alimony Amount

Alimony consists of two parts. The amount of monthly payment and the number of monthly payments. The monthly amount can be based on each spouse's gross monthly income (GMI). The court will also take into consideration the amount of discretionary income after reviewing necessary expenses. The number of payments is primarily based on the length of marriage.

Although there is no official formula, we developed a calculator. The calculator is based on Nevada's attempt to create a spousal support formula. It is called the Tonopah formula and is used by some of the judges. Visit rightlawyers.com to run the calculator.

How the Courts View Overtime

Overtime is not automatically calculated into spousal support payments. Fireman are known to work overtime. Your initial alimony payments will be calculated on your base pay and your overtime may or may not be used. It all depends on how consistent your overtime has been or will be.

If you have consistently earned overtime, then the court will include it. Consistent overtime can be added to your monthly gross income. Inconsistent overtime is usually not added in as income.

Alimony is Modifiable

Alimony is rarely permanent or in stone. Incomes of both spouses can change. The court will allow alimony to modify anytime either spouse's income changes by more than 20%. When a receiving spouse remarries the alimony stops.