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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.

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 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 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 for 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. The best way to determine and 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 the 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 of the details of your case.

Q: If asked to move out, should I move, and will I lose the right to see my 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 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 your 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 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.

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, levy his/her bank accounts if necessary, or even confiscate the obligor's driver's license as a result of significant non-payment for child support arrears.

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 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 grant a request for exclusive possession of the marital residence before the divorce is final.

Spousal Support

Nevada Courts are authorized to award spousal support (often referred to as payments; such as monthly payments) to either spouse. The amount of spousal support, if any, may be a lump sum or periodic for a specified time frame. The court has been given great latitude and discretion in determining a just and equitable amount.

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 one of the main documents 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, the growth of 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 contributions were made 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 labor and skill is considered community property.

Additionally, debts incurred during the marriage are generally considered to be community debts, with each spouse responsible for one-half. This may be true even if the debt is only in one party's name.

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 custodial arrangement or in a custody order 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."

Most recently, in January 2022, the Court in *Romano v. Romano* held that regardless of the custodial arrangement, in order to modify custody a party must show there has been a substantial change in circumstances affecting the welfare of the child, and the child's best interest is served by the modification.

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. If a parent does not have primary custody and seeks to relocate with the minor child, the parent must seek to modify custody and be awarded primary physical custody and demonstrate that the move is in the child's best interest.

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.