

Divorce Process and Procedure

1.5 Hour CLE Training

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Presenter:

**Josef M. Karacsonyi, Esq.
The Dickerson Law Group**

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DIVORCE PROCESS AND PROCEDURE

I. Jurisdiction and Grounds for Divorce

A. Jurisdiction and Grounds for Divorce (In Rem Jurisdiction)

NRS 125.020 provides as follows:

1. Divorce from the bonds of matrimony may be obtained for the causes provided in NRS 125.010, by verified complaint to the district court of any county:

- (a) In which the cause therefor accrued;
- (b) In which the defendant resides or may be found;
- (c) In which the plaintiff resides;
- (d) In which the parties last cohabited; or
- (e) If plaintiff resided 6 weeks in the State before the suit was brought.

2. Unless the cause of action accrued within the county while the plaintiff and defendant were actually domiciled therein, no court has jurisdiction to grant a divorce unless either the plaintiff or defendant has been resident of the State for a period of not less than 6 weeks preceding the commencement of the action.

NRS 125. 010 sets forth the grounds for divorce:

1. Insanity existing for 2 years prior to the commencement of the action. Upon this cause of action the court, before granting a divorce, shall require corroborative evidence of the insanity of the defendant at that time, and a decree granted on this ground shall not relieve the successful party from contributing to the support and maintenance of the defendant, and the court may require the plaintiff in such action to give bond therefor in an amount to be fixed by the court.

2. When the husband and wife have lived separate and apart for 1 year without cohabitation the court may, in its discretion, grant an absolute decree of divorce at the suit of either party.

3. Incompatibility

B. Personal Jurisdiction Over the Parties

“A court of this state may exercise jurisdiction over a party to a civil action on any basis not inconsistent with the Constitution of this state or the Constitution of the United States.” NRS 14.065.1. Personal jurisdiction can be either general or specific. *Casentini v. Ninth Judicial District Court*, 110 Nev. 721, 726, 877 P.2d 535, 538 (1994). “General jurisdiction exists where a defendant is held to answer in a forum for causes of action unrelated to the defendant’s forum activities. . . . [and] is appropriate where the defendant’s forum activities are so ‘substantial’ or ‘continuous and systematic’ that the defendant may be deemed present in the forum.” *Id.* (citations omitted). In order for the Court to exercise specific, personal jurisdiction, “depends upon the satisfaction of a three-pronged test:

1. It must first be established that the defendant ‘purposefully established minimum contact if the forum State’ by ‘conduct and connection with the forum State such that he should reasonably anticipate being haled into court there.’ . . .
2. It must next be shown that the cause of action arose out of or is connected to the acts purposefully engaged in by the defendant in the forum state. . .
3. Finally, even if the first two requirement are met, it must still be determined ‘whether the assertion of personal jurisdiction would comport with traditional notions of fair play and substantial justice.’”

While a party may obtain a divorce in Nevada simply by residing in the State for six (6) weeks and intending to make Nevada his or her domicile, the Court cannot divide property and debts unless it has personal jurisdiction over the other spouse. *Messner v. Eighth Judicial District Court*, 104 Nev. 759, 761-62, 766 P.2d 1320, 1321-22 (holding that court could not partition military retirement where husband was never domiciled in Nevada, and husband’s only connection with Nevada was answering a divorce complaint in Nevada and agreeing to an uncontested divorce, nearly thirty (30) years prior to action); *Ferrari v. Ferrari*, 585 S.W.2d 546, 547-48 (Mo.App. 1979) (holding that trial court erred in entering orders dividing property where court did not have *in personam* jurisdiction over non-resident spouse).

Nevada courts also may not award alimony, child support or attorney’s fees unless there is personal jurisdiction over the payor spouse. *See Messner*, 104 Nev. at 761-62, 766 P.2d at 1331-32; *Ferrari*, 585 S.W.2d at 547-48; *see also, Haddock v. Haddock*, 201 U.S.

562, 567-68 (1906) (holding that a personal judgment entered against a non-resident in a divorce action was void by operation of the due process clause of the Fourteenth Amendment); *Simpson v. O'Donnell*, 98 Nev. 516, 654 P.2d 1020 (1982) (“The district court did not have personal jurisdiction over [wife] since she is a domiciliary of [another state] and she did not appear in the divorce proceeding below. Thus, it could not adjudicate wife’s rights to child custody, child support, and alimony.”)

Id., 110 Nev. at 727-28, 877 P.2d at 539 (citations to United States Supreme Court cases omitted).

C. Child Custody Jurisdiction

II. Pleading

A. Complaint, Summons and Joint Preliminary Injunction

(1) Complaint

- (a) Names of Parties
- (b) Date and Place of Marriage
- (c) Grounds for Divorce
- (d) Residency
- (e) Children
- (f) Custody (Legal and Physical)
- (g) Child Support
- (h) Division of Property (Community and Separate)
- (i) Division of Debt (Community and Separate)
- (j) Alimony
- (k) Medical Insurance
- (l) Attorneys’ Fees

(2) Joint Preliminary Injunction

Eighth Judicial District Court Rule 5.85, provides as follows:

(a) At any time prior to the entry of a decree of divorce or final judgment and upon the request of either party in a family relations proceeding, a preliminary injunction will be issued by the clerk against both parties to the action enjoining them and their officers, agents, servants, employees or a person in active concert or participation with them from:

(1) Transferring, encumbering, concealing, selling or otherwise disposing of any of the joint, common or community property of the parties or any property which is the subject of a claim of community interest, except in the usual course of business or for the necessities of life, without the written consent of the parties or the permission of the court.

(2) Molesting, harassing, stalking, disturbing the peace of or committing an assault or battery on the person of the other party or any child, step-child or any other relative of the parties.

(3) Removing any child of the parties then residing in the State of Nevada with an intent or effect to deprive the court of jurisdiction as to the child without the prior written consent of all the parties or the permission of the court.

(b) The joint preliminary injunction will be automatically effective against the party requesting it at the time it is issued and effective upon all other parties upon service. The injunction is enforceable by all remedies provided by law including contempt.

(c) Once issued, the joint preliminary injunction will remain in effect until a decree of divorce or final judgment is entered or until modified or dissolved by the court.

B. Answer/Counterclaim

(1) Counterclaim for Divorce (same as Complaint)

III. Financial Disclosure

A. General or Detailed Financial Disclosure Form

Nevada Rules of Civil Procedure, Rule 16.2, provides in pertinent part, as follows:

(b) Required Disclosures.

(1) General Financial Disclosure. In divorce, annulment, or separate maintenance actions, or proceedings to dissolve a domestic partnership, each party must complete and file the court-approved General Financial Disclosure Form.

(2) Detailed Financial Disclosure. However, if any party to the action believes that at least one of the three criteria listed in Rule 16.2(b)(2)(A) through (C) is true, and that party desires a more detailed financial disclosure, that party may so certify and file with the court the court-approved Detailed Financial Disclosure Form. Upon such certification and filing, which must be filed by the plaintiff at the time of the filing of the complaint or by the defendant at the time an answer would normally be due under Rule 12(a)(1), each party shall be directed to file the court-approved Detailed Financial Disclosure Form, and the case shall also be subject to the Complex Divorce Litigation Procedures set forth in Rule 16.2(c)(2). The criteria to invoke the Detailed Financial Disclosure and Complex Divorce Litigation Procedures are:

(A) Either spouse's or domestic partner's individual gross income, or the combined gross income of the parties, is more than \$250,000 per year; or

(B) Either spouse or domestic partner is self-employed or the owner, partner, managing or majority shareholder, or managing or majority member of a business; or

(C) The combined gross value of the assets owned by either party individually, or in combination, is more than \$1,000,000.

A party must file and serve the completed General Financial Disclosure Form no later than 30 days after service of an answer to the complaint, unless the parties are otherwise directed to file a Detailed Financial Disclosure Form, or the court orders otherwise upon the motion of a party or the stipulation of the parties.

If the parties are ordered to file a Detailed Financial Disclosure Form, each party must file and serve the completed Detailed Financial Disclosure Form no later than 45 days after service of the Request to Opt-In to the Detailed Financial Disclosure Form and Complex Divorce Litigation Procedures, unless the court orders otherwise upon the motion of a party or the stipulation of the parties.

B. NRCP 16.2 and Mandatory Production

Nevada Rules of Civil Procedure, Rule 16.2, provides in pertinent part, as follows:

(3) Other Initial Disclosures. A party must, without awaiting a discovery request, provide to the other spouse or registered domestic partner no later than the time required for the filing of their General Financial Disclosure Form or Detailed Financial Disclosure Form, the following information and documentation:

(A) Evidence Supporting Financial Disclosure Form. For each line item on the General Financial Disclosure Form or Detailed Financial Disclosure Form, the financial statement(s), document(s), receipt(s), or other information or evidence believed to support that answer. If no documentary evidence exists, state in writing the basis of the claim, estimate, or belief as to the number or answer provided on the form.

(B) Evidence of Property, Income, and Earnings as to Both Parties. The following must be provided to the other party:

(i) Bank and Investment Statements. Copies of all monthly or periodic bank, checking, savings, brokerage, investment, and security account statements in which any party has or had an interest for the period commencing 6 months prior to the service of the summons and complaint through the date of the disclosure;

(ii) Credit Card and Debt Statements. Copies of credit card statements and debt statements for all parties for all months for the period commencing 6 months prior to the service of the summons and complaint through the date of the disclosure;

(iii) Real Property. Copies of all deeds, deeds of trust, purchase agreements, escrow documents, settlement sheets, and all other documents that disclose the ownership, legal description, purchase price, and encumbrances of all real property owned by any party;

(iv) Property Debts. Copies of all monthly or periodic statements and documents showing the balances owing on all mortgages, notes, liens, and encumbrances outstanding against all real property and personal property in which the party has or had an interest for the period commencing 6 months prior to the service of the summons and complaint through the date of the disclosure; or if no monthly or quarterly statements are available during this time period, the most recent statements or documents that disclose the information;

(v) Loan Application. Copies of all loan applications that a party has signed within 12 months prior to the service of the summons and complaint through the date of the disclosure;

(vi) Promissory Notes. Copies of all promissory notes under which a party either owes money or is entitled to receive money;

(vii) Deposits. Copies of all documents evidencing money held in escrow or by individuals or entities for the benefit of either party;

(viii) Receivables. Copies of all documents evidencing loans or monies due to either party from individuals or entities;

(ix) Retirement and Other Assets. Copies of all monthly or periodic statements and documents showing the value of all pension, retirement, stock option, and annuity balances, including individual retirement accounts, 401(k) accounts, and all other retirement and employee benefits and accounts in which any party has or had an interest for the period commencing 6 months prior to the service of the summons and complaint through the date of the disclosure; or if no monthly or quarterly statements are available during this time period, the most recent statements or documents that disclose the information;

(x) Insurance. Copies of all monthly or periodic statements and documents showing the cash surrender value, face value, and premiums charged for all life insurance policies in which any party has or had an interest for the period commencing 6 months prior to the service of the summons and complaint through the date of the disclosure; or if no monthly or quarterly statements are available during this time period, the most recent statements or documents that disclose the information;

(xi) Insurance Policies. Copies of all policy statements and evidence of costs of premiums for health and automobile insurance policies covering either party or any child of the relationship;

(xii) Values. Copies of all documents that may assist in identifying or valuing any item of real or personal property in which any party has or had an interest for the period commencing 6 months prior to the service of the summons and complaint through the date of the disclosure, including any documents that the party may rely upon in placing a value on any item of real or personal property;

(xiii) Tax Returns. Copies of all personal and business tax returns, balance sheets, profit and loss statements, and all documents that may assist in identifying or valuing any business or business interest for the last 2 completed calendar or fiscal years with respect to any business or entity in which any party has or had an interest within the past 12 months;

(xiv) Proof of Income. Proof of income of the party from all sources, specifically including W-2 forms, 1099 forms, and K-1 forms, for the past 2 completed calendar years, and year-to-date income information (paycheck stubs, etc.) for the period commencing 6 months prior to the service of the summons and complaint through the date of the disclosure; and

(xv) Personalty. A list of all items of personal property with an individual value exceeding \$200, including, but not limited to, household furniture, furnishings, antiques, artwork, vehicles, jewelry, coins, stamp collections, and similar items in which any party has an interest, together with the party's estimate of current fair market value (not replacement value) for each item.

A party must make these initial disclosures based on the information then reasonably available to that party and is not excused from making the disclosures because the party has not fully completed an investigation of the case, or because the party challenges the sufficiency of another party's disclosures, or because another party has not made the required disclosures.

IV. Temporary Orders and Case Management Conference

A. Motion/Counter-motion

NRS 125.040 provides as follows:

1. In any suit for divorce the court may, in its discretion, upon application by either party and notice to the other party, require either party to pay moneys necessary to assist the other party in accomplishing one or more of the following:

- (a) To provide temporary maintenance for the other party;
- (b) To provide temporary support for children of the parties; or
- (c) To enable the other party to carry on or defend such suit.

2. The court may make any order affecting property of the parties, or either of them, which it may deem necessary or desirable to accomplish the purposes of this section. Such orders shall be made by the court only after taking into consideration the financial

- (1) Custody
- (2) Support (Child and Spousal)
- (3) Child Interviews
- (4) Exclusive Possession
- (5) Behavior Orders
- (6) Attorneys' Fees
- (7) Other issues that arise during pendency of action.

B. Case Management Conference

- (1) Can address temporary issues without motion.
- (2) Setting of discovery deadlines and trials. Be prepared to address what the case will entail and require.

V. **Discovery**

A. Mandatory Production (described above)

B. Authenticity under 16.2

Nevada Rules of Civil Procedure, Rule 16.2(b)(2), provides in pertinent part, as follows:

(vii) **Objection as to Authenticity or Genuineness.** Any objection to the authenticity or genuineness of documents is to be made in writing within 21 calendar days of the date the receiving party receives them. Absent such an objection, the documents shall be presumed authentic and genuine and shall not be excluded from evidence on these grounds.

C. Depositions

D. Subpoenas

E. Experts

(1) Custody Evaluation

(2) Business Valuation

(3) Appraisers

(4) Lifestyle Analysis

(5) Others

VI. **Alternative Dispute Resolution**

A. Senior Judge Settlement Program

B. Volunteer Attorney Program

C. Private Mediation

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VII. Prove-Up/Summary Disposition/Trial

A. Prove Up

(1) Default - Establishing a Record for your Decree

(a) Court must make equal disposition of community property unless compelling reasons set forth in writing. NRS 125.150(1)(b); Blanco v. Blanco 311 P.3d 1170, 129 Nev. Adv. Op. 77 (2013).

(b) Why is the custody schedule in the best interests of the children.

(2) Settlement Confirmation

(a) Confirm the terms and the meaning.

(b) Confirm each party's understanding.

(c) Confirm agreement.

(d) Confirm independent representation or waiver of representation.

B. Summary Disposition

(1) Default

(2) Settlement

NRS 125.181 provides as follows:

A marriage may be dissolved by the summary procedure for divorce set forth in NRS 125.181 to 125.184, inclusive, when all of the following conditions exist at the time the proceeding is commenced:

1. Either party has met the jurisdictional requirements of NRS 125.020.
2. The husband and wife have lived separate and apart for 1 year without cohabitation or they are incompatible.

3. There are no minor children of the relationship of the parties born before or during the marriage or adopted by the parties during the marriage and the wife, to her knowledge, is not pregnant, or the parties have executed an agreement as to the custody of any children and setting forth the amount and manner of their support.
4. There is no community or joint property or the parties have executed and agreement setting forth the division of community property and the assumption of liability of the community, if any, and have executed any deeds, certificates of title, bills of sale or other evidence of transfer necessary to effectuate the agreement.
5. The parties waive any rights to spousal support or the parties have executed an agreement setting forth the amount and manner of spousal support.
6. The parties waive their respective rights to notice of entry of the decree of divorce, to appear, to request findings of fact and conclusions of law and to move for a new trial.
7. The parties desire that the court enter a decree of divorce.

NRS 125.182 provides as follows:

1. A summary proceeding for divorce may be commenced by filing in any district court a joint petition, signed under oath by both the husband and the wife, stating that as of the date of filing, every condition set forth in NRS 125.181 has been met and specifying the:
 - (a) Facts which support the jurisdictional requirements of NRS 125.020; and
 - (b) Grounds for the divorce.
2. The petition must also state:
 - (a) The date and place of the marriage.
 - (b) The mailing address of both the husband and the wife.
 - (c) Whether there are minor children of the relationship of the parties born before or during the marriage or adopted by the

parties during the marriage, or the wife, to her knowledge, is pregnant.

(d) Whether the wife elects to have her maiden or former name restored and, if so, the name to be restored.

3. An affidavit of corroboration of residency which complies with the provisions of subsections 1, 2 and 4 of NRS 125.123 must accompany the petition. If there is a marital settlement agreement which the parties wish the court to approve or make part of the decree, it must be identified and attached to the petition as an exhibit.

NRS 125.183 provides as follows:

1. At any time before the entry of a final judgment, either party to the marriage may revoke the joint petition and thereby terminate the summary proceeding for divorce.
2. The revocation may be effected by filing a notice of revocation with the clerk of the court in which the proceeding was commenced.
3. The revoking party shall send a copy of the notice of revocation to the other party by first-class mail, postage prepaid, at his or her last known address.

C. Trial

VIII. Other Miscellaneous Requirements

A. FMC Mediation

Eighth Judicial District Court Rule 5.81(a), provides as follows:

- (a) Unless otherwise directed by the court, all contested family matters involving minor children must be submitted to the judge prior to the setting of a trial date. A request that the judge consider these issues is made by the filing of a motion to resolve parent-child issues. The judge may refer contested child custody or visitation cases to the Family Mediation Center (FMC) for mediation. Any referral to FMC by the judge must be returned to the judge when completed by FMC unless otherwise directed by the judge.

B. COPE Class Custody

Eighth Judicial District Court Rule 5.07 provides as follows:

- (a) All parties in all domestic relations actions under Chapter 125, 125A and 126 of the Nevada Revised Statutes, where the interests of a child under the age of 18 years are involved, shall successfully complete the seminar for separating parents approved by the family division of the court.
- (b) The seminar shall be successfully completed within 45 days of service of the initial complaint or petition upon the defendant.
- (c) No action shall proceed to final hearing or order until there has been compliance with this rule; provided, however, that non-compliance by a parent who enters no appearance shall not delay the final hearing. The trial judge hearing the matter may take other appropriate action to compel attendance, including but not limited to action for contempt.
- (d) For good cause shown, the assigned trial judge may waive the requirement of completion of this program in individual cases.

C. Affidavit of Resident Witness or Testimony Corroborating Residency

Eighth Judicial District Court Rule 5.09(4) provides as follows:

- (4) Affidavits of residence witnesses shall state the affiant's residence address and the length of time affiant has resided in this state. The affiant shall state:
 - (a) That the affiant is personally acquainted with the party to the action whose residence is being corroborated;
 - (b) The party's residence address;
 - (c) The date from which the affiant knows that the party has resided at that address and the total length of time affiant has resided in the State of Nevada. If jurisdiction of the court is based upon the minimum legal residency, the affiant shall specify the days that the party has been physically present in Nevada.

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