

SOME DEFINITIONS and EXPLANATIONS OF TERMS USED IN FAMILY CASES
WITH CHILDREN

The following definitions and explanations are only to be used as general guidance. In no way are they intended to cover all the legal significance and importance of the terms. You are advised to seek a full explanation of the terms, definitions, and explanations, from a private attorney licensed to practice law in the State of Nevada.

Alimony or Spousal Support: Alimony, or Spousal Support is the amount paid to one spouse by the other for a period of time after the marriage is over, usually to assist the spouse in being able to maintain a lifestyle to which that spouse is accustomed, until that spouse can get back on firm financial footing. Spousal support may be for a limited amount of time, such as months or years, until remarriage, or may be permanent until remarriage. If the spouse that is receiving support remarries, unless otherwise agreed upon, and ordered by the court, the spousal support stops at the time of remarriage. There is no formula for spousal support and either party may receive spousal support. The factors governing spousal support are complicated and if you have any questions regarding spousal support, ***they should be discussed with a private attorney.***

Answer to Complaint or Petition: When a defendant or respondent is “served” with a complaint or petition, a ***formal, written, “answer”*** must be filed with the court by the “defendant” or “respondent” within twenty (20) days of the date the Complaint was served, either agreeing with, or opposing, the requests of the plaintiff or petitioner. If the defendant or respondent does not file a written, formal, answer to the claims, the other party (the plaintiff or petitioner) may take a “default” and receive all that they request in the complaint or petition. Very often, when a person receives a copy of the “complaint” or “petition”, they wait for some kind of a notice of a hearing. No hearing is automatically scheduled. Unless the defendant or respondent actually, formally, answers the complaint or petition, in writing, and files it with the court, the court will, most likely, automatically grant the plaintiff or petitioner everything they request.

If the defendant or respondent wants something different than is stated in the Complaint, the defendant or respondent may file a “counterclaim” with the answer.

Assets: Generally, ***anything*** acquired or purchased during the time of the marriage is considered a community asset and, therefore, community property, and it usually does not matter if one name is on the property or both names are on the property. Nevada is a “community property” State and the law in Nevada is that community assets are equally divided at the time of a divorce. ***There are some exceptions, and those should be discussed with a private attorney.*** The term “community assets” includes: the income of both parties during the marriage and anything purchased with either income, any interest acquired in real property, any retirement funds earned during the marriage, vehicles purchased during the marriage (even if in only one name), furniture purchased during the marriage, etc. In many cases, it does not matter in whose name these things are purchased. Sole and separate property is not ***usually*** considered “community property” ***unless*** it was given as a gift to the

community or the community has acquired an interest in it in another way. If one party “wastes” community assets or give community assets away without the other party’s knowledge or consent, that party may have to reimburse the community for the “wasting” of assets. If there is a question of wasted assets, ***those should be discussed with a private attorney.***

Child Custody: There are two kinds of “custody”, “legal” custody and “physical” custody. For a more complete explanation of custodial terms used in divorce, separation and custody cases, see the pamphlet entitled “Common Custody Terms”. Custody is a complicated issue and you are urged to seek the advice of private counsel on how to establish custody and visitation.

Child Support: Child support is governed by statute and, like child custody, can become complicated. Although the basic formula as set by statute is 18% of the non-custodial parent’s gross income for 1 child, 25% for 2 children, 29% for 3 children, 31% for 4 children and an additional 2% for each additional child, ***there are deviations from the formula that can be considered.*** The minimum child support allowed is \$100.00 per month, per child, and the maximum for each child is determined by the gross income of the non-custodial parent as set out in the statutes, with a cap that is adjusted annually. ***Under certain conditions, there are deviations from the minimum and maximum amounts.*** The child support statutes can be found at NRS 125B.070 and NRS 125B.080. You are urged to seek the advice of a private attorney on how to fully address child support and any deviations from the formula. Child support must be reviewed every 3 years or at any time if there is a substantial change of circumstances (such as the loss of a job or the legal responsibility for the support of another family member or another child). It is the responsibility of the parties to request a review and modification of the child support.

Child Visitation: or Parenting Time The statute governing child visitation and exchange is clear. It is not enough to just state “reasonable visitation” in any kind of agreement. The visits and terms of the exchange of the child must be clear and specific. There must be specific days, times and places of exchange included in the agreement, and the holiday calendar must be clearly defined. If there are expenses involved with the exchange and visits, the agreement must state which parent is going to bear the expenses, or, if the expenses are going to be shared. If there is travel involved, who makes the travel arrangements must be stated. If the visitation is going to be “supervised”, the arrangements must be stated as to who will supervise the visits, whether the supervised parenting time will be temporary or permanent, and, if temporary, when unsupervised parenting time will commence, and under what conditions. ***It must be remembered that the written agreement for visitation or parenting time is the controlling agreement and any verbal agreements are usually not enforceable through the courts.***

Community Property: Any assets acquired or purchased during the marriage are usually considered “community property”, no matter whose name they are in. That is the starting point for the division of property of the marriage. Nevada is a community property State and it is the law that the division of community property start with an equal division.

However, there are important deviations and exceptions to equal community property distribution. See “Assets” above. ***A private attorney should be consulted regarding division and distribution of community property.***

Complaint: The document filed to start a case. Also may be known as a “Petition”. The “complaint” or “petition” sets out the claims of the “plaintiff” or “petitioner” and tells the court what they want the court to order, as well as the basis for why the court should enter an order granting them what they want. The Complaint, or Petition, is then served on the Defendant, or Respondent, with a Summons notifying the Defendant, or Respondent, that a suit has been filed against them.

Counterclaim While the Complaint or Petition sets out the claims of the “plaintiff” or “petitioner,” a counterclaim sets out the claims of the “defendant” or “respondent”. The counterclaim is included within the Answer to the Complaint that defendant or respondent files. For example, if plaintiff asks for primary physical custody of the children in the Complaint and the defendant wants primary physical custody, the defendant can use the counterclaim to ask for primary physical custody.

Debts: Generally, any bills or debts acquired during the marriage are considered community debts and are equally divided at the time of the divorce. ***There are exceptions.*** Debts that are incurred for such things as gambling or for purchasing things that are not for the benefit of the community, may be considered sole and separate debts. ***Such debts should be discussed with a private attorney.***

Default: When a party does not formally, ***in writing***, answer or respond to legal documents served on them, the party that filed the documents can request that the court grant them everything they ask for in the documents. The party upon whom the documents were served is said to have “defaulted” and, because they did not file something saying they disagreed with what is being requested, it is assumed they agree with the requests and the court enters a “default” order. The “default” is most commonly used when a party is served with a divorce complaint and does not file any kind of answer or response and the court grants the divorce on “default”. ***It is important to remember that there are legal time frames in which an answer or response must be filed.***

Defendant: The party that answers or “defends” an action brought against them by the Plaintiff or Petitioner. The Defendant may also be labeled as the Respondent.

Habitual Residence: The state where the child or children have lived for at least the past six months.

Mediation: Both parties meet with a professional “mediator”, usually in an attempt to work out a parenting plan for children involved in a custody dispute. However, the division of property may also be “mediated” under certain circumstances. If you file in Washoe, Clark, Douglas and Carson City Counties, mediation of custody and visitation issues is mandatory if the parents cannot come to an agreement regarding custody and visitation of the children. If you file in Washoe, Clark, Douglas and Carson City Counties, you may use the Court mediation programs in the county in which you

file. There are certain circumstances under which mediation can be “waived”. However, those circumstances are very special and if you believe you are eligible for waiver of mediation, you need to speak to a private attorney on how to go about filing the correct documents to request that mediation be waived in your case. If you live in another county, you can check with the Law Clerk in the department in which your case is filed for a list of mediators in the community.

Motion: A request to the court, by one party, to enter an order requiring the other party to do something, or, to prevent the other party from doing something, or, for a clarification or reconsideration of an order that has already issued from the court. For example, the motion may request the court to:

1. Order the other party to do something
2. Prevent the other party from doing something
3. To review and/or change child support
4. To allow the custodial parent to relocate with the children
5. To change provisions of the custody and visitation order or agreement
6. Make the terms of a prior order clearer or easier to understand

This list is only an *example* of those things that can be addressed in a motion. Unless the motion is an *ex parte motion*, the motion must be served on the other party and the other party must have an opportunity to file a “response” or “opposition” to the motion. Whether you will have a hearing will depend upon which court you are in. Please check with the court clerk whether you will have a hearing set.

An ex parte motion is one that is presented to the court without notice to the other party that it is being filed and requests that an immediate order issue from the court without any notice to the other party and without the other party being able to

respond

to the motion before the order is entered. Usually, the *ex parte* motion is used only when there is an immediate, physical, danger to children. However, an *ex parte* motion may also be used in a disputed divorce to protect the assets of the community by preventing both parties from selling, or hiding, or transferring, or giving the assets away. *Ex parte* motions are extremely rare.

Moving Party: The person who files a motion or brings an action against another party. The moving party may be either the plaintiff or the defendant, or the petitioner or the respondent. For instance, a defendant may file a motion against the plaintiff in an action.

Order To Show Cause Regarding Contempt: When one party is not obeying a court order, the other party may bring a contempt charge against that party. The court will issue the order directing the party charged with not obeying the order to appear and “show cause” why they should not be held in contempt. The moving party, or the one bringing the contempt must prove three things: (1) that there exists a valid court order regarding the issue; (2) that the other party has the ability to obey the order; and, (3) the other party simply chooses not to obey the order. If the party is found in contempt of the court order, the party can be punished. Punishment may range from a fine to jail time.

Petitioner: A party that starts or “brings” an action against another party.
or
Plaintiff: The party who answers the action, or against whom the action is brought, is termed the Defendant.

Relocation or Moving Out of The State With Children: The law is clear on a parent’s relocation with the children. The custodian that wants to relocate out of the State, **must, before the move**, either have the other parent’s written permission to move out of the State, or, a court order allowing the move if the other parent will not give written permission for the move. The parent wishing to move must file a Motion For Relocation and serve the other parent with the Motion. Leaving the State with the children without either written permission from the other parent or an order from the court allowing the relocation may be the basis for a change of custody of the children and may be prosecuted as a crime. **Before leaving the area or State with children, it is urged that you seek the advice of an attorney.**

Reply to Counterclaim: When defendant or respondent files and serves their answer and counterclaim on the plaintiff or petitioner, the plaintiff or petitioner then has the duty to respond to the counterclaim by filing a Reply to Counterclaim. Within that Reply, plaintiff has the opportunity to tell the court what parts of the counterclaim he/she agrees with and what parts he/she disagrees with. Plaintiff or petitioner has 20 days from the date the counterclaim is served on them to file and serve the Reply. If plaintiff does not file a Reply to Counterclaim within that 20 days, the defendant or respondent has the right to take a default against the plaintiff. If a default is granted, the defendant may get everything she/he asked for in the counterclaim.

Reply to Response or Reply to Opposition: The person who files a motion with the court, has an opportunity to “reply” to the formal “response” or “opposition” to their motion, if one is filed by the opposing party. This “reply” is filed by the “moving party”.

Residency Requirement: One of the parties must be a resident of the State of Nevada and that person is known as the “resident”. In order to establish residency in the State of Nevada, that person must have physically lived and physically been here in the State for at least six (6) weeks immediately prior to filing the Complaint or Petition. If both people are residents of the State of Nevada, only one is actually designated as the “resident” for purposes of the filling out and filing of the Affidavit of Resident Witness Form.

A child, or the children, MUST be a resident, or residents, of the State of Nevada for a period in excess of six (6) MONTHS before the State of Nevada can enter any orders regarding custody, or visitation, of the child or children. This is STATE and FEDERAL LAW. If the child, or children, are not residents of the State of Nevada for a period of more than six (6) months immediately prior to the filing of the Petition or Complaint, the State of Nevada has no jurisdiction over orders regarding the children. THERE ARE EXCEPTIONS, but those should be discussed with a private attorney. The parties cannot automatically agree to waive the jurisdiction issue.

- Resident Witness: A person that will swear under oath or on the Affidavit of Resident Witness that one of the parties has been physically present in the State of Nevada for a period of at least six (6) weeks immediately prior to the filing of the Complaint or Petition. The Resident Witness may be a friend, a family member or a co-employee.
- Response or Opposition: An answer to a motion that has been filed and served. The person upon whom the motion has been served has ten (10) days to file a formal “response” or “opposition” to the motion if the motion is personally served on them and thirteen (13) days from the date of mailing in which to file a formal “response” or “opposition” if the motion is mailed to them. If no formal “response” or “opposition” is filed, in some counties, the person making the motion may then request to have their motion submitted to the judge for a decision and the judge can grant the person everything they asked for in the motion. See also “default”.
- Sole and Separate Property: Sole and separate property are those things Husband and Wife owned prior to the marriage, and it *may* also include a personal injury settlement received during the marriage by one of the parties, or money or property inherited by a party *if* the proceeds were kept entirely separate from the community, during the marriage. Sole and separate property remains the property of the individual who owned it prior to the marriage. *There are exceptions, such as a home or other real property.* The “community” may acquire an interest in a home or real property during the time of the marriage even if it belonged to one party prior to the marriage. If there is a question regarding such an interest, and what percentage the community may have acquired, *you are urged to see a private attorney.*
- Summons: Notice to a party that a complaint or petition has been filed against them in court. The Summons is a court document which is “issued” by the court clerk at the time the complaint or petition is filed in. It must be served on the other party, with a copy of the complaint or petition, **usually by personal service by a third, independent, party, but there are some other methods of service by court order.** The party upon which it is served, has twenty days (not counting the day of service) in which to file a **written** response, or answer, with the court. A copy of the written response, or answer, must be served by the party filing it, on the other party.
- Wage Assignment: The legal process of having child support payments deducted directly from the paycheck of the person who owes the support. The payment is then sent by the employer to the State Collection and Disbursement Unit or to the District Attorney’s Office Family Support Unit who will send it to the person who is owed the child support.