

McFARLING



LAW GROUP

POST-DECREE MOTIONS

The Typical Stages in a Post-Decree Motion

There are occasions that a party may file a motion to re-open a case. A common reason for doing so is to modify the terms of a child custody or child support order. A case can also be reopened to modify alimony or to enforce orders for custody, child support, alimony or property division.

Motion

To re-open the case one of the parties must file a motion with the Court outlining their facts and legal argument as to why the Court should take some action. The filing of this Motion triggers a Court date. The Motion does not need to be personally served, only mailed to the address on file with the Court.

The motion will generally be on affidavit of the party, not outside evidence.

Opposition-Countermotion-Reply

Within 14 business days of being served the party must file a written Opposition to the Motion. They can also file a Countermotion at this time if they so choose. A written Opposition must be filed or the Court can grant the Motion accepting the non-filing as non-opposition.

After the Opposition the original party can file a Reply to Opposition.

These are the only pleadings that are generally filed at this stage.

Motion Hearing

Generally, the hearings on motions are arguments of the attorneys only. While the clients usually attend, they do not usually testify. The Judge reviews the papers on file and in some cases takes arguments of the attorney. No evidence is usually taken. The court will decide whether or not to grant the motion, deny the motion, or set an evidentiary hearing (Trial) where evidence would be taken and at which witnesses are called to the stand to testify.

Certain matters cannot be fully decided at a motion hearing and must be set for trial. Your attorney will tell you when this is the case. For instance, a motion to modify custody can be denied at the first hearing, but cannot be granted without a settlement or evidentiary hearing. A motion to modify child support can be fully decided at a motion hearing if the Parties have filed proper Financial Disclosure Forms and attached paystubs to allow the Court to calculate support and there are no arguments that

the income represented by the other side is inaccurate or should not be used in the child support calculation.

If your matter is set for trial at this hearing the Court will likely open a period for discovery and also set the due dates for the various obligatory pre-trial requirements. The Judge may also issue certain temporary orders until the trial.

If an agreement is reached between the parties the agreement can be drafted by the counsel for the parties and submitted to the Court for approval. In some cases the parties appear in Court and will put the settlement on the record.

Evidentiary Hearing

In instances where settlement cannot be reached an evidentiary hearing will be necessary. The trial will occur after discovery is completed. Prior to trial the attorney will need to prepare a pre-trial memorandum, trial exhibits, and possibly other obligatory items as ordered by the Court. The trial will last anywhere from a few hours to several days depending on the complexity of the case. A decision will either be rendered on the spot or sometime thereafter.

At trial, the parties and witnesses will testify as to the facts they have personal knowledge of. Evidence will also be formally introduced for consideration by the Court. An evidentiary hearing is much more formal than an argument hearing.

Appeals

Only once a final judgment is entered can a party initiate an appeal to the Nevada Supreme Court. This appeal must be filed within 30 days of the entry of the judgment. Failure to timely file an appeal will bar the party from appealing forever, no matter what.

Appeals are expensive and often take years. The end result will be the Nevada Supreme Court affirming the lower court's decision, remanding the case back to the District Court, or remanding a part of the case.

A settlement conference is mandatory between the parties at the beginning of the appeals process to determine if a resolution can be reached.

If you are dissatisfied with the outcome of your trial, an appeal is likely your only remedy. Remedies at the District Court level are very limited and also time sensitive. The District court remedies have between 10 days and 6 months as time restraints depending the remedy.

It is extremely important that if you are dissatisfied with your trial outcome you must consult with your attorney immediately as to your options. The time restraints for post-trial remedies are extremely rigid and even being one day past them will likely bar you forever.

Is This All Really Necessary?

Going to trial or going through significant litigation is not required. Most cases settle at some point prior to trial. However, settlement requires an agreement to be reached by **both** parties.

Our goal is always to settle a case that can be settled with a fair result for our client. Some matters are more inclined to settle than others depending on the facts of the case or the demands of the parties. Unfortunately if the other party is not settlement minded this can impede a settlement.

Reaching a good settlement is an art form. You want to be settlement minded but not seem as if you are willing to sacrifice on major issues just to reach a resolution. It is important to be reasonable and rational in your demands but also send the message that if the other party is not also reasonable we are prepared to go to trial and are confident we will win.

Settlement conferences and mediation are excellent ways to broker a settlement. Your attorney will evaluate your case based on their experience with the law as well as their experience with your particular Judge and the Judge's tendencies. Based on this, your attorney should be able to provide you with a range of expectations should the matter go to trial. This will aid in settlement negotiations.

You should trust your attorney's opinion on what a reasonable settlement is as your attorney knows the law and knows the Judge.