



Forensic Accounting • Business Valuation
Calculation of Economic Damages

How to Examine a Tax Return

State Bar of Nevada Family Law Conference
September 26, 2024 | Lake Tahoe, Nevada

Presentation by:
Judge Paul Gaudet and Jenny Allen

Overview

- Review pertinent components of tax returns
- Discuss key financial terms/definitions
- **Through a Case Study:**
 - Understand the potential areas of income manipulation
 - Discuss the non-cash components reported on the tax return
 - After adjustments, assess potential income available for temporary support orders, alimony, and child support



Types of Tax Returns



- The term “flow-through” entities describes legal business formations in which the income derived by the business “flows-through” directly to its owners.
 - Includes: S-Corporations (Form 1120-S), Partnerships (Form 1065), and Sole Proprietorships (Schedule C on Form 1040).
- C-Corporations (Form 1120) – commonly referred to as “Double Taxation” – the business pays taxes on profits and the stockholder pays taxes on dividends received.

Pertinent Financial Definitions

- EBITDA
 - Earnings before **Interest, Taxes, Depreciation, and Amortization**
- Cash-Flow
 - Represents how much cash a company generates from its operations, investments, and financing activities
 - **DIFFERS FROM INCOME**



Pertinent Financial Definitions Cont.

- Depreciation
 - Depreciation is an accounting method used to allocate the cost of a tangible or physical asset over its useful life. Depreciation represents how much of the asset's value has been used up in any given time period. Companies depreciate assets for both tax and accounting purposes and have several different methods to choose from, with the most common being straight-line depreciation and accelerated depreciation.
- Amortization
 - Similar concept as depreciation, but associated with intangible assets (example: intellectual property, organization costs, goodwill).

Critical Considerations



- Cash basis versus accrual basis
- Quality of Financial Statements
- Degree of control
- Debt Obligations/principal loan payments not reported on the income statement
- Unreported cash
- Reasonableness of historical look back period
- The interplay between Distributions and Profits
- While privately-held small businesses will sometimes fund an owner's personal charges and other non-business payments, these types of payments should be recorded in the business records as an owner distribution or a receivable due from the owner. Such accounting treatment effectively keeps these payments off the income statement, thus preventing the understatement of business income.



Meet Joe and Jill Blow

Disclaimers:

This is a fictional story based upon real life experiences. We have never met Mr. and Mrs. Blow.

Case Study Facts



- DOM: January 1, 1993; three Children, all over 18 years of age, and independent
- The Blows started a construction company during marriage. That company is community property. The company name is “Joe Blow’s Bull and Baloney Construction Service”.
- The Blows never deemed it necessary to incorporate or set up an LLC for the business.
- Joe is responsible for the day-to-day operation of the company, while Jill has historically been a home maker.
- The company has been in existence for quite a while and has been the **sole source** of the Blows financial existence during marriage.
- The Blows own 2 adjacent parcels of property in the SW part of Las Vegas: their home sits on one parcel, and the company stores its equipment on the other. There is one note covering both parcels.

1. Jill initially filed for divorce in Clark County.
2. Jill filed a Preliminary Motion seeking Temporary Spousal Support (set to be heard on the same date as the CMC).
3. Both Parties have filed timely, complete FDFs (if you can even believe that?!).
4. 16.2 disclosures have been filed prior to the hearing.
5. Joe and Jill have stipulated to utilize the service of “Evaluate Them for Cheap” for a business valuation. They inform all necessary documentation has been provided, retainer has been provided, and the valuation will take 90 days to complete. Besides that, there is a stipulation to appraise the marital home and the adjacent property. Joe states a desire to buy out Jill’s interest.



Timeline of Marital Dissolution

A Tale of Disparate Positions

- Jill asserts that she is not aware of the value of the company, nor the cash flow it provides to the parties on a monthly basis.
- Jill further asserts in her FDF that the household expenses, which have existed for a long time, exceed \$12,000 per month.
- Those include mortgage (both parcels are included in mortgage payment), utilities, food, vehicles, gas, pets, and personal care.
- The expenses appear legit, and nothing appears to be grossly over-stated.
- Joe asserts that the company is nothing more than a job, and has little value.
- Joe further asserts in his FDF a similar figure for household expenses. Interestingly, Joe asserts GMI of \$5,250 from operations of the company, which he supports by tax filing, primarily the parties Schedule C, Profit/Loss from Business, for 2023.



Now What?

- How will/should the Court evaluate the issues presented in arriving at a fair temporary Order which will sustain both Joe and Jill pending trial?
- What is actual cash that is available to the company (Joe) on a monthly/yearly basis?
- What expenses deducted by the company are “legit”?
- How should the Schedule C be analyzed?
- What is a fair amount of temporary support?



- Green – Profit
- Red – Non-cash depreciation expense
- Blue – Potential areas of personal/related party expenses

**SCHEDULE C
(Form 1040)**

Department of the Treasury
Internal Revenue Service

**Profit or Loss From Business
(Sole Proprietorship)**

Attach to Form 1040, 1040-SR, 1040-SS, 1040-NR, or 1041; partnerships must generally file Form 1065.

Go to www.irs.gov/ScheduleC for instructions and the latest information.

OMB No. 1545-0074

2023

Attachment
Sequence No. **09**

Name of proprietor
Joe and Jill Blow

Social security number (SSN)

A Principal business or profession, including product or service (see instructions)
Construction Services

B Enter code from instructions

C Business name. If no separate business name, leave blank.
Joe Blow's Bull and Baloney Construction Service

D Employer ID number (EIN) (see instr.)

E Business address (including suite or room no.) 123 Anywhere in Clark County Street
City, town or post office, state, and ZIP code Las Vegas, NV 89101

F Accounting method: (1) Cash (2) Accrual (3) Other (specify)

G Did you "materially participate" in the operation of this business during 2023? If "No," see instructions for limit on losses . Yes No

H If you started or acquired this business during 2023, check here

I Did you make any payments in 2023 that would require you to file Form(s) 1099? See instructions Yes No

J If "Yes," did you or will you file required Form(s) 1099? Yes No

Part I Income

1	Gross receipts or sales. See instructions for line 1 and check the box if this income was reported to you on Form W-2 and the "Statutory employee" box on that form was checked <input type="checkbox"/>	1	500,000
2	Returns and allowances	2	0
3	Subtract line 2 from line 1	3	500,000
4	Cost of goods sold (from line 42)	4	0
5	Gross profit. Subtract line 4 from line 3	5	500,000
6	Other income, including federal and state gasoline or fuel tax credit or refund (see instructions)	6	0
7	Gross income. Add lines 5 and 6	7	500,000

Part II Expenses. Enter expenses for business use of your home **only** on line 30.

8	Advertising	8	25,000	18	Office expense (see instructions)	18	12,000
9	Car and truck expenses (see instructions)	9	20,000	19	Pension and profit-sharing plans	19	
10	Commissions and fees	10		20	Rent or lease (see instructions):		
11	Contract labor (see instructions)	11	100,000	a	Vehicles, machinery, and equipment	20a	25,000
12	Depletion	12		b	Other business property	20b	
13	Depreciation and section 179 expense deduction (not included in Part III) (see instructions)	13	50,000	21	Repairs and maintenance	21	8,000
14	Employee benefit programs (other than on line 19)	14	10,000	22	Supplies (not included in Part III)	22	
15	Insurance (other than health)	15	12,000	23	Taxes and licenses	23	15,000
16	Interest (see instructions):			24	Travel and meals:		
a	Mortgage (paid to banks, etc.)	16a	15,000	a	Travel	24a	25,000
b	Other	16b		b	Deductible meals (see instructions)	24b	10,000
17	Legal and professional services	17	10,000	25	Utilities	25	
26				26	Wages (less employment credits)	26	100,000
27a				27a	Other expenses (from line 48)	27a	
27b				b	Energy efficient commercial bldgs deduction (attach Form 7205)	27b	
28	Total expenses before expenses for business use of home. Add lines 8 through 27b	28	437,000				
29	Tentative profit or (loss). Subtract line 28 from line 7	29	63,000				

Description	2023	
	\$	Rationale
TOTAL INCOME ON SCHEDULE C	\$ 63,000	
ADJUSTMENTS:		
1 + Remove depreciation	50,000	Non-cash outflow
2 + Remove Mortgage Interest	15,000	Associated with personal property
3 + Remove Car and Truck	20,000	Associated with personal property
4 + Remove Office Expense	12,000	Potentially personal in nature
5 + Remove Travel	25,000	Potentially personal in nature
6 + Remove Meals	10,000	Potentially personal in nature
ADJUSTED INCOME - ANNUAL	195,000	
MONTHLY AVERAGE INCOME	\$ 16,250	

Readjusted Income

Last Thoughts

- Does it reasonably match the parties' historical lifestyle?
- Does it render income that covers all monthly outflows (including debt obligations)?
- What expenses will each party be responsible for going forward? How does this impact support allocation?



Thank you





Business Valuation in Divorce in Nevada

Mark A. Bailey, CPA/ABV/CEIV/CFF

Lisa Bagley, CPA, CVA





Agenda

- Standard of Value
- Premise of Value
- Methodologies
- Normalizing Financial Statements
- Double Dip
- Other

Standard of Value

- Fair Market Value

“The amount at which the property would change hands between a willing buyer and willing seller, when the former is not under any compulsion to buy, and the latter is not under any compulsion to sell, both parties having reasonable knowledge of relevant facts.” IRC Rev. Rul 59-60

- Fair Value (Calculated Value)

In the State of Nevada, the standard of value in marital dissolution and property settlement cases is *fair value*. Fair value is a legal term subject to judicial interpretation by jurisdiction. The concept of ‘market value’ embraced in a fair market value determination is absent in a fair value opinion and replaced with a concept of ‘fairness’.

Where fair market value requires a willing buyer and a willing seller having reasonable knowledge of facts, with neither under compulsion *fair value* does not. Most frequently in marital dissolution or dissenting stockholder disputes these attributes are not present. **Correspondingly, the calculation of *fair value* does not include discounts for lack of marketability or minority interest.**



Premise of Value

- Going Concern (most frequent)
- Liquidation



Methodologies

- Income Approach
- Excess Earnings Method
- Asset Based Approach
- Market Approach



Normalizing Financial Statements

- Definition
- Balance sheet adjustments
- Cash flow adjustments
- What to look for



Double Dip

- Fair market compensation
- Cash flows available to equity owners



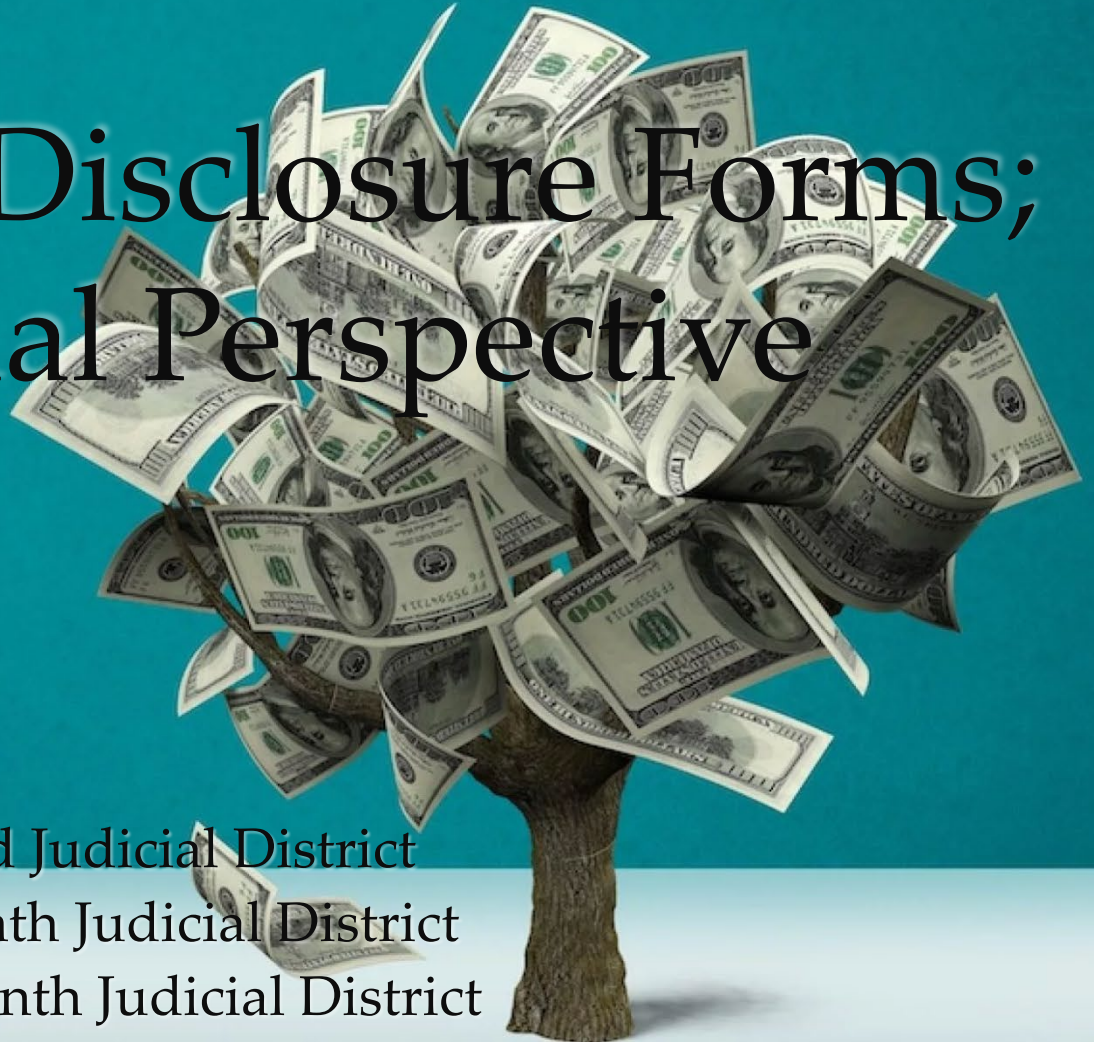
Select Court Cases

- Pereira v. VanCamp analysis
- Malmquist Analysis
- Ford v. Ford



Questions

Financial Disclosure Forms; The Judicial Perspective



Judge Bridget Robb; Second Judicial District
Judge Charles Hoskin; Eighth Judicial District
Judge Thomas Stockard; Tenth Judicial District

Why? (and When?)

Rule 16.2. Mandatory Prejudgment Discovery Requirements in Family Law Actions (Not Including Paternity or Custody Actions Between Unmarried Persons)

(c) Financial Disclosure Forms.

(1) *General Financial Disclosure Form.* In all actions governed by this rule, each party **must complete, file, and serve a General Financial Disclosure Form (GFDF)**, Form 4 in the Appendix of Forms, **within 30 days of service of the summons and complaint**, unless a **Detailed Financial Disclosure Form (DFDF)**, Form 5 in the Appendix of Forms, is required in accordance with Rule 16.2(c)(2) or the court orders the parties, at the case management conference, to complete the DFDF.

(2) *Detailed Financial Disclosure Form.*

(A) The plaintiff, concurrently with the filing of the complaint, or the defendant, concurrently with the filing of the answer, but no later than 14 days after the filing of the answer, may file a **Request to Opt-in to Detailed Financial Disclosure Form and Complex Litigation Procedure**, Form 6 in the Appendix of Forms, certifying that:

- (i) either party's individual gross income, or the combined gross income of the parties, is more than \$250,000 per year; or
- (ii) either party is self-employed or the owner, partner, managing or majority shareholder, or managing or majority member of a business; or
- (iii) the combined gross value of the assets owned by either party individually or in combination is more than \$1,000,000.

Why? (and When?)

Rule 16.205. Mandatory Prejudgment Discovery Requirements in Paternity or Custody Actions Between Unmarried Persons from application of this rule, in whole or in part, upon a finding of good cause, so long as the exemption is contained in an order of the court.

(c) Financial Disclosure Forms.

(1) **General Financial Disclosure Form.** In **all actions** governed by this rule, **each party must complete, file, and serve the cover sheet, income schedule and expense schedule** of the General Financial Disclosure Form (GDFD), Form 4 in the Appendix of Forms, **within 30 days of service of the summons and complaint**, unless a Detailed Financial Disclosure Form (DFDF), Form 5 in the Appendix of Forms, is required in accordance with Rule 16.205(c)(2) or the court orders the parties at the case management conference to complete the DFDF.

(2) **Detailed Financial Disclosure Form.**

(A) The plaintiff, concurrently with the filing of the complaint, or the defendant, concurrently with the filing of the answer, but no later than 14 days after the filing of the answer, may file a Request to **Opt-in to Detailed Financial Disclosure Form** and Complex Litigation Procedure, Form 6 in the Appendix of Forms, certifying that:

- (i) either party's individual gross income, or the combined gross income of the parties, is **more than \$250,000 per year**; or
- (ii) either party is **self-employed or the owner, partner, managing or majority shareholder**, or managing or majority member of a business.

Eighth Judicial Court Rules

EDCR 5.507. Financial Disclosure Required for Motions Involving Money

Unless otherwise ordered by the court, or otherwise required by another rule or statute:

- (a) A General Financial Disclosure Form (GFDF) **must be filed** in support of **any** motion or countermotion that includes a request to establish or modify child support, spousal support, fees and allowances, exclusive possession of a residence, or any matter involving money to be paid by a party.
- (b) A GFDF **must be filed** in support of any opposition to a motion or countermotion described in section (a).
- (c) All financial disclosures must be filed on the form(s) specified by the NRCP.
- (d) A financial disclosure **must be filed within 3 days** of the filing of the motion, countermotion, or opposition it supports, and may only be filed in open court with leave of the judge upon a showing of excusable delay.
- (e) Every GFDF filing **shall include copies of the filing party's 3 most recent paycheck stubs** (or equivalent).
- (f) An assertion within a motion, opposition, or countermotion that there has been no material change in a financial disclosure filed within the preceding 6 months satisfies this rule.
- (g) The court may construe any motion, opposition, or countermotion **not supported by a timely, complete, and accurate financial disclosure as admitting that the positions asserted are not meritorious and cause for entry of orders adverse to those positions, and as a basis for imposing sanctions.**
- (h) In paternity matters, or postjudgment family division matters, only the case information, household, and income and expense sections of the GFDF need be completed. For good cause shown, the court may require a party to complete the remaining portions of the GFDF.
- (i) For good cause shown, the court may require a party to file a Detailed Financial Disclosure Form (DFDF).

Second Judicial Court Rules

WDFCR 40. Financial Declaration/Case Information Statement

2. In divorce, annulment, or separate maintenance actions, a Financial Declaration **shall** be filed upon motion to establish or modify support in compliance with Rule 12. The court-approved form shall be used.

(a) If any party resides with one or more adult persons other than the opposing party, that party's Financial Declaration shall reflect the number of all adult persons living in the household and the extent to which the adult persons provide support and share in the party's living expenses.

(b) The requirements of this rule may not be waived as to content or time except by order of the court for good cause shown.

(c) The Financial Declaration form filed on behalf of any party shall be amended forthwith as material information is obtained by a party or counsel.

3. Filing and service of the Financial Declaration shall not supplant nor limit such discovery as either party is entitled to undertake pursuant to the Nevada Rules of Civil Procedure.

4. At such time that it appears to the parties and/or the court that resolution of the case is unlikely and trial is likely, the court may direct additional filing of a more comprehensive Financial Declaration on the court-approved form.

Second Judicial Court Rules

WDCR 12. Motions; Points and Authorities and Decisions

1. Except as provided in Rule 1, all motions **shall** be accompanied by points and authorities and any affidavits relied upon. Motions for support or allowances and opposition thereto in divorce and separate maintenance actions **shall include** disclosure of the financial condition of the respective parties upon a form approved by the court pursuant to Rule 40 of these rules.

What are Judges looking for in the FDF?



{ Try to look good!

FILING CODE: FDF

Name: _____
Address: _____
Phone: _____
Email: _____
Attorney for
Nevada State Bar No. _____

_____ Judicial District Court
_____, Nevada

Plaintiff,	Case No. _____
vs.	Dept. _____
Defendant.	

GENERAL FINANCIAL DISCLOSURE FORM

A. Personal Information:

1. What is your full name? (*first, middle, last*) _____
2. How old are you? _____ 3. What is your date of birth? _____
4. What is your highest level of education? _____

B. Employment Information:

1. Are you currently employed/ self-employed? (check one)
 - No
 - Yes If yes, complete the table below. Attached an additional page if needed.

Date of Hire	Employer Name	Job Title	Work Schedule (days)	Work Schedule (shift times)

2. Are you disabled? (check one)
 - No
 - Yes If yes, what is your level of disability? _____
What agency certified you disabled? _____
What is the nature of your disability? _____

C. Prior Employment: If you are unemployed or have been working at your current job for less than 2 years, complete the following information.

Prior Employer: _____ Date of Hire: _____ Date of Termination: _____
Reason for Leaving: _____

Monthly Personal Income Schedule

A. Year-to-date Income.

As of the pay period ending _____ my gross year to date pay is _____.

B. Determine your Gross Monthly Income.

Hourly Wage

Hourly Wage	×	Number of hours worked per week	=	Weekly Income	×	52 Weeks	=	Annual Income	+	12 Months	=	Gross Monthly Income
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Annual Salary

Annual Income	+	12 Months	=	Gross Monthly Income
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C. Other Sources of Income.

Source of Income	Frequency	Amount	12 Month Average
Annuity or Trust Income			
Bonuses			
Car, Housing, or Other allowance:			
Commissions or Tips:			
Net Rental Income:			
Overtime Pay			
Pension/Retirement:			
Social Security Income (SSI):			
Social Security Disability (SSD):			
Spousal Support			
Child Support			
Workman's Compensation			
Other:			

Total Average Other Income Received

Total Average Gross Monthly Income (add totals from B and C above)

D. Monthly Deductions

	Type of Deduction	Amount
1.	Court Ordered Child Support (automatically deducted from paycheck)	
2.	Federal Health Savings Plan	
3.	Federal Income Tax	
4.	Health Insurance Amount for you: _____ For Opposing Party: _____ For your Child(ren): _____	
5.	Life, Disability, or Other Insurance Premiums	
6.	Medicare	
7.	Retirement, Pension, IRA, or 401(k)	
8.	Savings	
9.	Social Security	
10.	Union Dues	
11.	Other: (Type of Deduction)	
Total Monthly Deductions (Lines 1-11)		

Business/Self-Employment Income & Expense Schedule

A. Business Income:

What is your average gross (pre-tax) monthly income/revenue from self-employment or businesses?
\$ _____

B. Business Expenses: Attach an additional page if needed.

Type of Business Expense	Frequency	Amount	12 Month Average
Advertising			
Car and truck used for business			
Commissions, wages or fees			
Business Entertainment/Travel			
Insurance			
Legal and professional			
Mortgage or Rent			
Pension and profit-sharing plans			
Repairs and maintenance			
Supplies			
Taxes and licenses (include est. tax payments)			
Utilities			
Other:			
Total Average Business Expenses			

Personal Expense Schedule (Monthly)

A. Fill in the table with the amount of money you spend **each month** on the following expenses and check whether you pay the expense for you, for the other party, or for both of you.

Expense	Monthly Amount I Pay	For Me <input type="checkbox"/>	Other Party <input type="checkbox"/>	For Both <input type="checkbox"/>
Alimony/Spousal Support				
Auto Insurance				
Car Loan/Lease Payment				
Cell Phone				
Child Support (not deducted from pay)				
Clothing, Shoes, Etc...				
Credit Card Payments (minimum due)				
Dry Cleaning				
Electric				
Food (groceries & restaurants)				
Fuel				
Gas (for home)				
Health Insurance (not deducted from pay)				
HOA				
Home Insurance (if not included in mortgage)				
Home Phone				
Internet/Cable				
Lawn Care				
Membership Fees				
Mortgage/Rent/Lease				
Pest Control				
Pets				
Pool Service				
Property Taxes (if not included in mortgage)				
Security				
Sewer				
Student Loans				
Unreimbursed Medical Expense				
Water				
Other:				
Total Monthly Expenses				

Household Information

A. Fill in the table below with the name and date of birth of each child, the person the child is living with, and whether the child is from this relationship. Attached a separate sheet if needed.

	Child's Name	Child's DOB	Whom is this child living with?	Is this child from this relationship?	Has this child been certified as special needs/disabled?
1 st					
2 nd					
3 rd					
4 th					

B. Fill in the table below with the amount of money you spend each month on the following expenses for each child.

Type of Expense	1 st Child	2 nd Child	3 rd Child	4 th Child
Cellular Phone				
Child Care				
Clothing				
Education				
Entertainment				
Extracurricular & Sports				
Health Insurance (if not deducted from pay)				
Summer Camp/Programs				
Transportation Costs for Visitation				
Unreimbursed Medical Expenses				
Vehicle				
Other:				
Total Monthly Expenses				

C. Fill in the table below with the names, ages, and the amount of money contributed by all persons living in the home over the age of eighteen. If more than 4 adult household members attached a separate sheet.

Name	Age	Person's Relationship to You (i.e. sister, friend, cousin, etc...)	Monthly Contribution

Personal Asset and Debt Chart

A. Complete this chart by listing all of your assets, the value of each, the amount owed on each, and whose name the asset or debt is under. If more than 15 assets, attach a separate sheet.

Line	Description of Asset and Debt Thereon	Gross Value	Total Amount Owed	Net Value	Whose Name is on the Account? You, Your Spouse/Domestic Partner or Both
1.		\$ -	\$ -	= \$	
2.		\$ -	\$ -	= \$	
3.		\$ -	\$ -	= \$	
4.		\$ -	\$ -	= \$	
5.		\$ -	\$ -	= \$	
6.		\$ -	\$ -	= \$	
7.		\$ -	\$ -	= \$	
8.		\$ -	\$ -	= \$	
9.		\$ -	\$ -	= \$	
10.		\$ -	\$ -	= \$	
11.		\$ -	\$ -	= \$	
12.		\$ -	\$ -	= \$	
13.		\$ -	\$ -	= \$	
14.		\$ -	\$ -	= \$	
15.		\$ -	\$ -	= \$	
Total Value of Assets (add lines 1-15)		\$ -	\$ -	= \$	

B. Complete this chart by listing all of your unsecured debt, the amount owed on each account, and whose name the debt is under. If more than 5 unsecured debts, attach a separate sheet.

Line #	Description of Credit Card or Other Unsecured Debt	Total Amount owed	Whose Name is on the Account? You, Your Spouse/Domestic Partner or Both
1.		\$	
2.		\$	
3.		\$	
4.		\$	
5.		\$	
6.		\$	
Total Unsecured Debt (add lines 1-6)		\$	



CERTIFICATION

Attorney Information: Complete the following sentences:

1. I (have/have not) _____ retained an attorney for this case.
2. As of the date of today, the attorney has been paid a total of \$ _____ on my behalf.
3. I have a credit with my attorney in the amount of \$ _____.
4. I currently owe my attorney a total of \$ _____.
5. I owe my prior attorney a total of \$ _____.

IMPORTANT: Read the following paragraphs carefully and initial each one.

_____ I swear or affirm under penalty of perjury that I have read and followed all instructions in completing this Financial Disclosure Form. I understand that, by my signature, I guarantee the truthfulness of the information on this Form. I also understand that if I knowingly make false statements I may be subject to punishment, including contempt of court.

_____ I have attached a copy of my 3 most recent pay stubs to this form.

_____ I have attached a copy of my most recent YTD income statement/P&L statement to this form, if self-employed.

_____ I have not attached a copy of my pay stubs to this form because I am currently unemployed.

Signature

Date

CERTIFICATE OF SERVICE

I hereby declare under the penalty of perjury of the State of Nevada that the following is true and correct:

That on (date) _____, service of the General Financial Disclosure Form was made to the following interested parties in the following manner:

Via 1st Class U.S. Mail, postage fully prepaid addressed as follows:

Via Electronic Service, in accordance with the Master Service List, pursuant to NEFCR 9, to:

Via Facsimile and/or Email Pursuant to the Consent of Service by Electronic Means on file herein to: _____

Executed on the ____ day of _____, 20__.

Signature

Where is the responsibility for accuracy?

- ⌘ Who is the FDF prepared for?
 - ⌘ Court?
 - ⌘ Discovery?
- ⌘ Who is responsible for the content?
 - ⌘ Party who prepared it?
 - ⌘ Attorney representing party?
 - ⌘ Perhaps add acknowledgement for attorneys?



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Questions?

FAMILY LAW BASICS

A BRIEF PRIMER FOR NEW FAMILY
LAW ATTORNEYS

Presented by:

Hon. Charles J. Hoskin

Hon. Dixie Grossman

Melissa Exline

Brian E. Blackham



Definition of Family Law

- Divorce
- Child Custody, Visitation and Support
- Premarital and Post-Nuptial Agreements
- Parentage
- Termination of Parental Rights
- Adoption
- Guardianships
- Domestic Violence

Marriage Defined

- No common law marriage
- Marriage is a civil contract thus parties must be 18 and capable to contract
- Must have a solemnization
- If between 16 and 18 years old must have parent consent
- If under 16 must have consent of parents and court finding it is in their best interest

Marriage Equality

- Same Sex Marriage allowed & recognized
- All 50 States
- Both Federal and State Benefits
- No requirement to marry in Nevada
- Do not have to terminate Domestic Partnership to get married.
- MARRIAGE IS MARRIAGE

Domestic Partnerships

- They still exist with marriage equality.
- No Federal Benefits - Only State Benefits
- Must register in Nevada for recognition
- Domestic partners have the same rights, responsibilities, obligations, protections, benefits and duties, with the exception of mandated employer health care benefits, as do parties to any other civil contract.

Community Property

All property acquired after marriage (unless it is separate property) by either spouse is community property unless otherwise provided by:

1. An agreement in writing between the spouses, which is effective only as between them.
2. A decree of separate maintenance issued by a court of competent jurisdiction.
3. Written authorization of a gift between spouses
4. A Decree of Divorce or Marital Settlement Agreement

Separate Property

- All property of the spouses owned prior to marriage
- Property that is acquired by gift, devise, descent
- An award for personal injury damages, with the rents, issues and profits thereof.

Marital Agreements

- Prenuptial Agreements/ Postnuptial Agreements
- A premarital agreement must be in writing and signed by both parties, both spouses should be represented.
- Premarital agreements can govern property, debts, and alimony, during life and upon death; but CANNOT decide child custody, visitation or support.
- Postnuptial agreements cannot govern alimony

Cohabitation

- Nevada does not recognize “common law marriages.” NRS 122.010
- In 1984 Nevada Court began recognizing community property rights for cohabitating couples under equitable principals.
- The Court found that the public policy of encouraging legal marriage would not be “well served by allowing one participant in a meretricious relationship to abscond with the bulk of the couple’s acquisitions.”

Subject Matter Jurisdiction

- Grounds:

- Insanity for two years prior to action
- Separation for one year or longer w/o cohabitation
- Incompatibility i.e “irreconcilable differences.”

&

Plaintiff or Defendant is a resident (physically present, intent to remain in Nv) for 6 weeks prior to filing the action.

- NOTE “residence” is no longer synonymous with “domicile” per *Senjab v. Alhulaibi*, 137 Nev. 632 (2021) (overturning more restrictive standard set in *Aldabe v. Aldabe* 84 Nev. 392 (1968)).

Venue

- Even if the court in which a divorce action has been filed has jurisdiction to hear the matter, a defendant has a right to change the place of trial to his or her residence.
- NRS 13.040 gives direction on where venue is proper.

Practice Tip: NRS 13.040 does not deal with **matters of continuing jurisdiction** in which none of the parties reside in the original county but seek to change venue on a motion filed after a final decree. AB 102 makes changes to NRS 13.050 effective Oct. 1, 2017 making it easier to move a case in a continuing jurisdiction situation.

Custody Jurisdiction

- Broad powers over custody
- Mandate Custody & Support if kids involved
- UCCJEA
 - Home State Jurisdiction
 - Significant Connection
 - Emergency Jurisdiction
 - No Other State with Jurisdiction
- Continuing Jurisdiction

Changing Jurisdictions

- The “Home State” will have exclusive and continuing jurisdiction.
- Only that court has jurisdiction to modify a custody order, until one of two things happens:
- *That* court determines that neither child, or a parent, has any significant connection to the State, and the child’s care, protection, training, and personal relationships are not there;
- *OR*
- A Court of that State, *or* elsewhere, determines that the child, the child’s parents, do not reside there.

Joint Petition v. Complaint

COMPLAINT

- A Complaint starts a contested action, same as any civil action.
- A valid claim can be stated by citing “incompatible in marriage.”
- Always file a counterclaim for separate claim for attorney’s fees and to prevent unwanted dismissals.
- Affidavit or residency must be filed before Decree is entered.



Joint Petition v. Complaint

JOINT PETITION

- A summary divorce with both parties filing as co-petitioners.
- Jurisdictional and venue rules still apply.
- Both parties must agree and recite terms of their agreement in Decree, usually through a Marital Settlement Agreement (“MSA”).
- NRS 125.182 requirements for joint petition.

Domestic Partnership Dissolution

- Termination of a Domestic Partnership under the law is effected through a simplified termination proceeding. In some instances, however, the domestic partners may not qualify for a "simplified termination proceeding," and must follow the dissolution of marriage procedures set forth in Nevada's divorce statutes, NRS Chapter 125. The legislative intent is for domestic partners to fall within the jurisdiction of the family court and avoid the general jurisdiction civil court.

Mandatory Discovery

NRCP 16.2

- FRONT LOADED DISCOVERY TO DISCLOSE AND FILE FINANCIAL DISCLOSURE FORMS!
 - Bank Accounts
 - Deeds/ Title Documents
 - Retirement Accounts
 - Receivables
 - Loans
 - Tax Returns
- NRCP 16.2 and 16.205 (paternity or maternity/custody)
- NRCP 16.21 Discovery (eff. Mar. 1, 2019) and 16.215 Child Witness Rules (amend. March 1, 2019)

Preliminary Matters & Motions

- Early Case Conference
- Early Case Conference Report (jointly filed)
- NRCP 16.2 (c) Case Management Conference - Temporary Orders to maintain status quo during divorce (not immediately appealable):
 - temporary custody, temporary child support, temporary spousal support, payment of joint and separate bills and expenses, financial injunctions, physical injunctions and restraints against domestic violence, possession of real and personal property, and preliminary payment of litigation fees and costs.
- File for Mutual Financial Restraining Orders under WDCRs

Annulment

Void Marriage = Prohibited By Law

- Consanguinity between the parties
- A party is already married

Voidable Marriage = Valid until Annulled

- Lack of consent of parent or guardian.
- Want of understanding
- Fraud
- Contract grounds

Legal Separation

- Separates financial “community”
- Child custody, visitation, support issues

ALL WITHOUT DIVORCING!

This is very rare, usually done for insurance purposes.

Spousal Support

- Permanent = payment for an indefinite period of time, made in periodic payments
- Rehabilitative = for the purpose of rehabilitating the other party (i.e. while the spouse is going back to school or trying to find employment) for a specified period
- The court may award alimony in a specific principal sum or as specified periodic payments, as appears “just and equitable.”

Calculating Alimony

May consider any relevant factor but shall consider:

1. The financial condition of each spouse;
2. The nature and value of the respective property of each spouse;
3. The contribution of each spouse to any property held by the spouses jointly;
4. The duration of the marriage;
5. The income, earning capacity, age and health of each spouse;
6. The standard of living during the marriage;
7. The career before the marriage of the spouse who would receive the alimony;
8. The existence of specialized education or training or the level of marketable skills attained by each spouse during the marriage;
9. The contribution of either spouse as homemaker;
10. The award of property granted by the court in the divorce, other than child support and alimony, to the spouse who would receive the alimony; and
11. The physical and mental condition of each party as it relates to the financial condition, health and ability to work of that spouse.

Property Rights & Division

- Equal distribution State
- Waste *may* be a reason for unequal distribution (difficult!).
 - “Generally, the dissipation which a court may consider refers to one spouse's use of marital property for a selfish purpose unrelated to the marriage in contemplation of divorce or at a time when the marriage is in serious jeopardy or is undergoing an irretrievable breakdown.” *Kogod v. Cioffi-Kogod*, 135 Nev. 64, 75-76 (2019) (internal citations omitted).
- Separate property of parties does NOT factor in to “equal”
- Characterization of property is the primary issue.
- All property earned during marriage presumed community property, separate property must be shown
- Direct Tracing and Exhaustion Method
- Commingling separate property and community property
 - Some commingling considered “Gifts to community”
 - *Malmquist v. Malmquist*, 106 Nev. 231 (1990).

Criteria for Child Custody

- “Ensure that minor children have frequent associations and continuing relationship with both parents” and “to encourage such parents to share the rights and responsibilities of child rearing.”
- Married versus Un-Married Parents
- Must define visitation rights with sufficient particularity to ensure that they can be properly enforced.

Best Interest of the Child

Shall consider and set forth its specific findings concerning, among other things:

- (a) The wishes of the child if the child is of sufficient age and capacity to form an intelligent preference as to his or her custody.
- (b) Any nomination by a parent or a guardian for the child.
- (c) Which parent is more likely to allow the child to have frequent associations and a continuing relationship with the noncustodial parent.
- (d) The level of conflict between the parents.
- (e) The ability of the parents to cooperate to meet the needs of the child.
- (f) The mental and physical health of the parents.
- (g) The physical, developmental and emotional needs of the child.
- (h) The nature of the relationship of the child with each parent.
- (i) The ability of the child to maintain a relationship with any sibling.
- (j) Any history of parental abuse or neglect of the child or a sibling of the child.
- (k) Whether either parent or any other person seeking custody has engaged in an act of domestic violence against the child, a parent of the child or any other person residing with the child.
- (l) Whether either parent or any other person seeking custody has committed any act of abduction against the child or any other child.

Legal Custody of Minor Children

Legal custody involves having basic legal responsibility for a child and making major decisions regarding the child, including the child's health, education and religious upbringing.

- Sole legal custody vests this right with one parent, while joint legal custody vests this right with both parents. *Mack v. Ashlock*, 112 Nev. 1062, 1067 (1996).
- Joint legal custody requires that the parents be able to cooperate, communicate, and compromise to act in the best interest of the child. *Id.*
- The court must apply “best interest of the child” standard when resolving legal custody disputes of parents having joint legal custody (though not the best interest *factors* that apply to physical custody). *Kelley v. Kelley*, 139 Nev. Adv. Op. 39 (2023).

Physical Custody of Minor Children

- Physical custody involves the time that a child physically spends in the care of a parent. During this time, the child resides with the parent and that the parents provides supervision for the child and makes the day-to-day decisions regarding the child.
- Joint Physical Custody: Custodial time generally must not be less than 40% (146 days) over a calendar year. *Rivero v. Rivero*, 125 Nev. 410, 427 (2009). But see *Bluestein v. Bluestein*, 131 Nev. 106 (2015).
- Primary Physical Custody: When one parent has less 146 days per calendar year, the other parent generally deemed to have primary physical custody. *Id.* at 428.
- Sole Physical Custody: where the child resides with only one parent and the noncustodial parent's parenting time is restricted to no significant in-person parenting time. *Roe v. Roe*, 139 Nev. Adv. Op. 21 (2023).

Modification of Custody

Parent seeking modification of primary or joint physical custody order must show (1) there has been a substantial change in circumstances affecting the welfare of the child and (2) the modification serves the best interest of the child. *Romano v. Romano*, 138 Nev. 1 (2022).

- Motion to modify custody may be denied without evidentiary hearing unless movant shows a prima facie case for modification, and the court must make specific findings on whether movant made prima facie case. *Myers v. Haskins*, 138 Nev. Adv. Op. 51 (2022). Court may only look at *moving* party's allegations and sworn statements, unless non-moving party shows evidence that "conclusively establishes" falsity of moving party's claims. *Id.*

Requirement to Attempt Resolution

Practice Tip: In many cases, local rules require that parent first try to resolve custody disputes the other parent before bringing a motions in family court. A parent failing to make this effort or who unreasonably refuses an attempt to resolve the issue could be forced to pay the other parent's attorney's fees and costs.

Relocation NRS 125C

The relocating parent must demonstrate:

- (a) There exists a sensible, good-faith reason for the move, and the move is not intended to deprive the non-relocating parent of his or her parenting time;
- (b) The best interests of the child are served by allowing the relocating parent to relocate with the child; and
- (c) The child and the relocating parent will benefit from an actual advantage as a result of the relocation.

2. If a relocating parent demonstrates to the court the provisions set forth in subsection 1, the court must then weigh the following factors and the impact of each on the child, the relocating parent and the non-relocating parent, including, without limitation, the extent to which the compelling interests of the child, the relocating parent and the non-relocating parent are accommodated:

- (a) The extent to which the relocation is likely to improve the quality of life for the child and the relocating parent;
- (b) Whether the motives of the relocating parent are honorable and not designed to frustrate or defeat any visitation rights accorded to the non-relocating parent;
- (c) Whether the relocating parent will comply with any substitute visitation orders issued by the court if permission to relocate is granted;
- (d) Whether the motives of the non-relocating parent are honorable in resisting the petition for permission to relocate or to what extent any opposition to the petition for permission to relocate is intended to secure a financial advantage in the form of ongoing support obligations or otherwise;
- (e) Whether there will be a realistic opportunity for the non-relocating parent to maintain a visitation schedule that will adequately foster and preserve the parental relationship between the child and the non-relocating parent if permission to relocate is granted; and
- (f) Any other factor necessary to assist the court in determining whether to grant permission to relocate.

Alternative Dispute Resolution

- Settlement is the way to go in all family law matters! Children are often at the heart of these matters. No one should want a Judge who has just met them to make these important decisions for their family.



my mom and
dad are gettig
a difors.
i am sad.

Amy

Mediation

- Check your jurisdiction for rules on mediation. Some courts mandate mediation on child custody matters prior to a matter being resolved.
- Mediation is not mandatory on financial matters.
- Mediation as ADR is effective, time saving, and results in happier people.

Collaborative Divorce

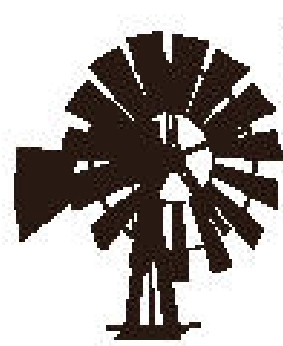
- Divorce involving two attorneys, two mental health professionals and a neutral financial professional to assist couples through divorce.
- Different paradigm - no lawsuit!!

Domestic Violence

- Sometimes called “family violence”
- Very common
- Happens between many couples and goes under reported, in both straight and same-sex couples.
- Temporary Protective Orders/
Extended Protective Orders and
Protection Orders against
Harassment and Stalking

Resources

- www.washoecourts.com
- www.co.clark.nv.us
- www.abanet.org/family/home.html
- www.nevadacheckup.state.nv.us
- *Nevada Family Practice Manual*
- *Selected Nevada Revised Statutes Relating to Children and Family Law*
- www.lgbtbar.org



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Anatomy of Trials

Presenters: Raymond Oster, Esq. & Jason Naimi, Esq.

Nevada Family Law Conference

September ,26 2024

Lake Tahoe, Nevada

Stages of Trial:

1. Preparation –
 - a. Theory
 - b. Theme
 - c. Gathering evidence
2. Pre-demonstration pitch – Opening statement
3. Presentation of product – Present evidence
4. Call for action – Closing argument

Opening Statement:

1. Elements of the Opening Statement
 - a. The facts
 - b. The parties
 - c. The evidence
 - d. The issues
 - i. Answer the following questions for the court
 1. What are the issues?

2. What are you asking for?
3. Why are you asking for it?
4. Why should the court grant your request?

2. Strategy of the Opening Statement

- a. Develop the theory of the case
- b. Develop of the theme of the case
- c. Address the weaknesses

Evidence:

1. Types of Evidence –

- a. Testimony: Spoken evidence given by a witness under oath in court or at a deposition, or written evidence given under oath through an affidavit.
- b. Documentary evidence: Any proof that can be presented in writing (contracts, wills, invoices, etc.). However, term can technically include any number of media upon which such documentation can be recorded and stored (photographs, recordings, films, printed emails, etc.).
- c. Digital evidence: Any type of proof obtained from an electronic source, such as emails, hard drives, word processing documents, instant message logs, ATM transactions, cell phone logs, and so forth.
- d. Physical evidence: Any proof introduced in the form of a physical object, whether whole or in part.
- e. Demonstrative evidence: This is a common form of proof, generally having the form of the representation of an object. Examples include: photographs, videos,

sound recordings, x-rays, maps, drawings, graphs, charts, simulations, sculptures, and models, among others.

2. Testimonial Evidence – Direct

- a. Who, if anyone...
- b. What, if anything...
- c. When, if ever...
- d. Where, if anyplace...
- e. Why, if for any reason...
- f. How, if at all...
- g. Describe...
- h. Explain...
- i. AVOID “Assumes facts not in evidence”

3. Testimonial Evidence – Cross-examination

- a. Do not ask open-ended questions
- b. Try to restrict witness answers to “Yes” or “No”
- c. You are the focus of attention
- d. Suggest the answer with the way you ask your question
- e. Any matter relevant to any issue in the case, including credibility, is fair game

4. Objections – see Common Trial Objections enclosed

- a. Always get a ruling on your objection
- b. Do not settle for a “Move along” response from the court
- c. If evidence is denied:
 - i. Make substance of excluded evidence known

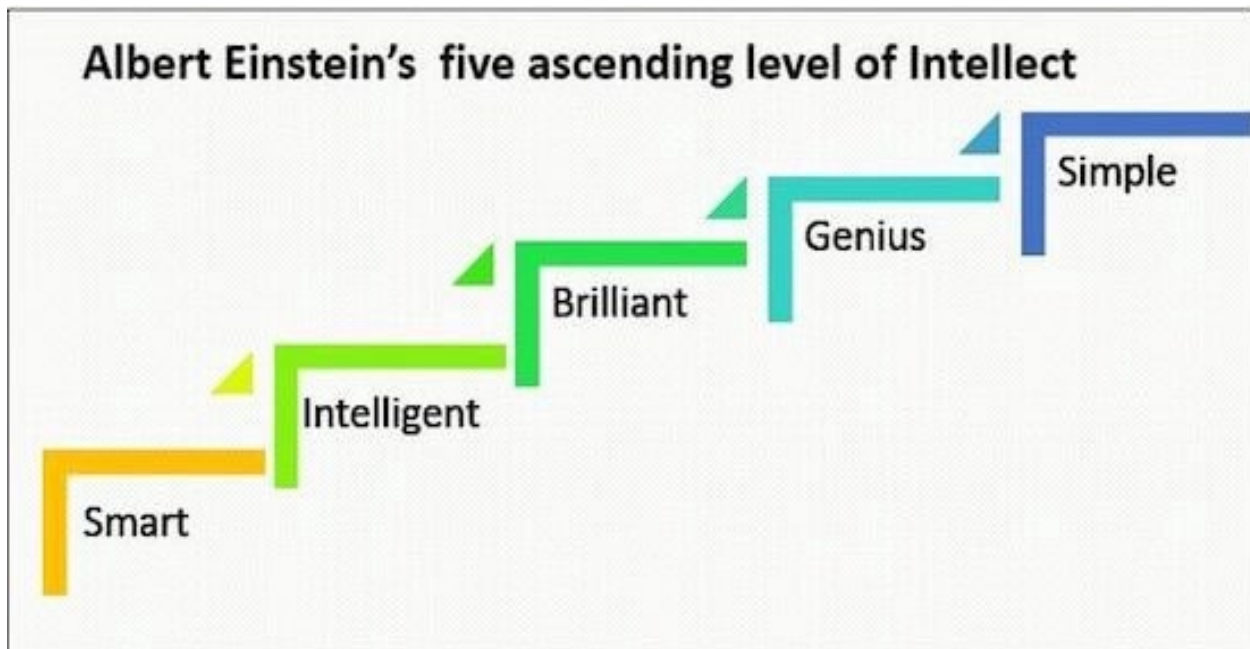
- ii. Make offer of proof:
 - 1. What
 - 2. When
 - a. Testimonial
 - b. Documentary
- 5. Evidentiary Tree –
 - a. Preliminary Questions – FRE 104
 - b. Relevance – FRE 401
 - c. Authenticity – FRE 901
 - d. Self-authentication – 902
 - e. Hearsay & Exceptions – FRE 801, 803
 - f. Best Evidence Rule – FRE 1001-1008
 - g. Probative Value vs Unfair Prejudice – FRE 403
- 6. Basics of Tendering Evidence –
 - a. Mark
 - b. Identify
 - c. Authenticate
 - d. Offer

Closing Argument:

- 1. Track the promises made in opening
 - a. Yours – that you delivered as promised
 - b. Theirs – that they failed to deliver as promised

2. Don't forget to weave your theme
3. Refer to witness testimony
4. Refer to exhibits (number and page)
5. Call to action
6. Shut up and sit down – they get it already!

KEEP IT SIMPLE...!



B. Organizing The Details: Systems make a difference to feeling like you considered everything and left nothing out.

1. **Identify what a win looks like issue by issue and what you need to prove to make it happen:**
 - a. Use the elements of whatever statutes and rules provide the basis for each type of relief to create categories.
 - b. Know what caselaw impacts the black letter of the statutes and rules.

2. **Categorize case facts:**
 - a. Sort facts into positives and negative for the theory of recovery on each issue.
 - b. For the negatives, try to list the ideas that neutralize them or put them into context. Ask what facts the other side will see as supporting their theory of recovery.
 - c. Rank the positives to accentuate them by leading with strong facts and closing on strong facts.
3. **Identify what witnesses you can use to:**
 - a. Admit the facts that support your case theory on each issue.
 - b. Give context to or to refute facts that undermine your theory for each issue.
4. **Identify which exhibits support your theory of recovery on each issue and which exhibits undermine your theory of recovery on each issue:**
 - a. Chart foundations and anticipate objections and add the authorities you can use to meet objections to your testimony outlines.
 - b. Chart and assess objections for facts you want to try to keep out. Based on the likelihood of the exhibit getting in, consider whether you want to risk calling attention to the exhibit that may get into evidence over objection.
5. **List the witnesses who can lay the foundations for each exhibit and map out evidentiary foundations.**
6. **Identify the witnesses who can bring each exhibit to life:**
 - a. This means explaining why the Judge should do something with it.

- b. List the areas of personal knowledge each witness has about the exhibit and consider choosing the one that can both lay foundation and bring it to life and give it context.
- c. Consider that Judges may not look at exhibits that they admit without hearing testimony.
- d. If an exhibit does not provide a platform for any testimony, list why you need it in evidence.
- e. If you do not need an exhibit in evidence, list why you want it in evidence.
- f. Work from the answers to use the exhibit to:
 - i. Support a summary of voluminous records; or
 - ii. Create a demonstrative exhibit.

7. Structure the order of witnesses balancing the need to tell the story of the case effectively with the goal of not telegraphing strategy:

- a. List the pros and cons of having your client testify first since they should be the one who cooperates more to lay out the facts.
- b. List the pros and cons of having the opposing party testify first since they will be more difficult to work with yet offer the opportunity for adverse examination otherwise known as testimony of the lawyer punctuated by the occasional yes or no of the witness. Include as a con anything that your questions would open up for clarification by opposing counsel that you may not want to come out at the start of your case. Include as a pro that if your case in chief goes after the other side, much of what should be damaging may already be in evidence.

- c. If your side proceeds second, be ready to adjust the approach based on what went in during the other side's case so as not to reopen anything you nailed during your cross examinations.

8. Map out the case to know what to cover in opening statement, the order and content of witness examinations including references for impeachment and references for anticipated evidentiary objections and what to cover in closing argument.

- a. Read and list the statutes, rules or other authorities that provide the basis for all the things you can ask the Court to include in the judgment.
- b. Decide whether you work best by pooling all of your case facts and then culling out what you want to ask the Court to award in its judgment or by listing what you want the Court to award in its judgment and then matching up the requests with required facts.
- c. List all possible witnesses and list the areas of each witness's personal knowledge and ability to lay exhibit foundations.
- d. Decide how to outline testimony. Consider the following methods:
 - i. **Client:** For your client, a chronological or reverse chronological approach to chart events of the marriage can be a good start. Then you must narrow the chronology to the items the Court needs to take evidence about. Next match subjects with exhibits that support your points and chart out foundations. Chart out possible objections and authorities for meeting those objections to make your record for any appeal. Check your questions against

any prior testimony of your client and the other witnesses and against what you alleged in your court filings to note inconsistencies. If your jurisdiction limits proofs based on discovery produced or disclosures made, have references to where you produced or disclosed the information.

ii. **Direct Exams:** For witness you examine on direct, work from the deposition or other transcript and abstract it to make every answer into a first-person statement. Organize the statements by topic. Organize the information within each topic in some way that tells a cogent story. Then create a “W” question designed to elicit each fact.

iii. **Cross Examination and Hostile or Adverse Witnesses:** For witness you cross or adversely examine, work from the deposition or other transcript and turn every answer into a leading question or questions with one fact per question. Unless a transcript uses an adjective, leave out adjectives. Margin notes should include references to transcript pages and lines to be ready for impeachment and to exhibits for impeachment and foundation purposes.

Evidentiary Objections

OBJECTION	NRS	FRE	DESCRIPTION
Ambiguous	50.115(1)	611(A)	Question is susceptible to at least two interpretations or is so vague or unintelligible as to make it likely to confuse the trier of fact or witness.
Argumentative	50.115(1)	611(a)	Question does not seek information from the witness, but makes an argument to the trier of fact in the guise of a question.
Asked & Answered	50.115(1)	611(a)	Question calls for repetitive testimony from a witness who has previously given the same testimony in response to a question.
Assumes a Fact Not in Evidence	50.115(1)	611(a)	Question assumes or reverences facts that have not already been proved.
Authentication Lacking	52.015	901(a)	Examiner must establish the identity and authenticity of a document or other physical evidence. Proof must be offered that the evidence is in fact what it is claimed to be.
Best Evidence Rule	52.235	1002	Original document ⁶ must be offered to prove its contents.
Beyond Scope (of Direct, cross, etc.)	50.115(2)	611(b)	Question does not relate to subjects raised by prior examination, or to the credibility of the witness.
Bolstering		608(a)	It is improper to bolster the credibility of a witness before it is attacked.
Character Evidence	48.045 48.055	404(a)(1) 404(a)(2) 404(b) 405(b)	A person's character is inadmissible when offered on the issue of that person's propensity to act in conformity with a character trait.
Competency	50.15 – 50.065	601 – 606	A witness is competent if they have the ability to perceive events about which testimony is given, communicate that perception intelligibly, and appreciate the obligations of the oath.
Compound	50.115(1)	611(a)	More than one question is being asked at the same time.
Compromise	48.105	07	Evidence of settlement negotiations are inadmissible to prove <i>liability</i> (may be relevant to show bias or undue delay).
Conclusion	50.025 50.265	602 701	Lay witness must only testify to facts within his or her personal knowledge.
Confusing	50.115(1)	611(a)	Examiner uses unfamiliar words, uses disjointed phrases, or confuses the facts or evidence.
Counsel testifying	50.035	603	Examiner's questioning is in the form of a statement designed to persuade the trier of fact rather than a question to the witness.
Cumulative	48.035 50.115(1)	403 611(a)	Evidence repeatedly presented by exhibits or testimony is unfair and wastes court's time.
Foundation Lacking	50.025 52.015	602 901(a)	Failure to lay proper foundation (knowledge, time, etc.) for testimony or exhibit.
Hearsay	51.065 61.065	802	Question calls for hearsay testimony or witness gave hearsay testimony: an out of court statement offered for the truth of the matter stated.
Improper Question or Improper Form	47.050 61.065	103(c) 611(a)	Catch-all objection when you know a question is improper, but cannot articulate why it is improper. Objection to form is most common.
Improper Characterization	48.045 48.055	404 405	Question or response improperly characterized a person. Question uses suggestive, argumentative, or impertinent language.
Improper Impeachment	50.075 – 50.105	607 – 610	Examiner may impeach by showing bias, prejudice, interest, motive, memory problems, or lack of veracity
Irrelevant	48.025	402	Testimony does not tend to make a consequential fact more or less likely.
Leading	50.115(3)	611(c)	The form of the question suggests its answer.
Misquoting Witness or Misstating Evidence	47.040	103(c) 611(a)	Question misstates evidence or prior testimony of the witness.
Narrative	50.115(1)	611(a)	Question is so broad as to encourage the witness to ramble and possibly present inadmissible evidence or hearsay.
Opinion	50.265 50.275	701 702 704	Witness is being asked to give an opinion where either expert opinion is required or where the witness has no personal knowledge.
Prejudicial	48.035	403	The probative value of the evidence is substantially outweighed by the danger of unfair prejudice caused by the evidence.
Privilege	49.015	501	Answer would violate a legal privilege.
Speculation	50.025 50.265	602 701	Question calls for witness to guess; the witness lacks personal knowledge.
Unresponsive	50.115(1)	611(a)	Answer includes testimony unrelated to the focus of the question.

Authentication and Identification

“The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims.”
(NRS 52.015/FRE 901(a))

Example of Authentication/Identification	NRS	FRE	Explanation
Testimony of Witness with Knowledge	52.025	901(b)(1)	Testimony that a matter is what it is claimed to be.
Handwriting: Nonexpert Opinion	52.035	901(b)(2)	Nonexpert opinion as to the genuineness of handwriting, based upon familiarity not acquired for purposes of the litigation
Handwriting: Trier or Expert	52.045	901(b)(3)	Comparison by the trier of fact or by expert witness with specimens which have been authenticated.
Handwriting: Distinctive Characteristics	52.055	901(b)(4)	Appearance, contents, substance, internal patterns or other distinctive characteristics, taken in conjunction with circumstances.
Voice Identification	52.065	901(b)(5)	A voice, whether heard firsthand or through mechanical or electronic transmission or recording, is sufficiently identified by opinion based upon hearing the voice at any time under circumstances connecting it with the alleged speaker.
Telephone conversations	52.075	901(b)(6)	A telephone conversation is sufficiently authenticated by evidence that a call was made to the number supplied by the telephone company for the person in question if: The call was to a place of business and the conversation related to business reasonably transacted over the telephone; or Circumstances, including self-identification, show the person answering to be the one called.
Public Records and Reports	52.085	901(b)(7)	Evidence that a writing authorized by law to be recorded or filed and in fact recorded or filed in a public office, or a purported public record, report, statement or data compilation, in any form, is from the public office where items of this nature are kept.
Ancient Documents or Compilations of Data	52.095	901(b)(8)	Evidence that a document or data compilation, in any form: Is in such condition as to create no suspicion concerning its authenticity; Was in a place where it, if authentic, would likely be; and Is at least 20 years old at the time it is offered.
Process or System	52.105	901(b)(9)	Evidence describing a process or system used to produce a result and showing that the result is accurate.

Presumptions of Authenticity (Self-Authentication)

“Extrinsic evidence of authenticity as a condition precedent to admissibility is not required with respect to the following:” (FRE 902)

Self-Authenticating Document	NRS	FRE	Explanation
Foreign Public Documents	52.115	902(3)	A document purporting to be executed or attested in a person’s official capacity by a person authorized by the laws of a foreign country to make the execution or attestation, and accompanied by a final certification as to the genuineness or the signature and official position: of the executing or attesting person; or of any foreign official whose certificate of genuineness of signature and official position relates to the execution or attestation or is in a chain of certificates of genuineness of signature and official position relating to the execution or attestation. A final certification may be made by a secretary of embassy or legation, consul general, consul, vice consul or consular agent of the United States, or a diplomatic or consular official of the foreign country assigned or accredited to the United States. If reasonable opportunity has been given to all parties to investigate the authenticity and accuracy of an official document the court may, for good cause shown order that it be treated as presumptively authentic without final certification or permit it to be evidenced by an attested summary with or without final certification.
Certified Copies of Public Records	52.125	902(4)	A copy of an official record or report or entry therein, or of a document authorized by law to be recorded or filed and actually recorded or filed in a public office, including data compilations in any form, certified as correct by the custodian or other person authorized to make the certification. The term “official record” shall include fingerprint classification cards kept by law enforcement agencies.
Official Publications	52.135	902(5)	Books, pamphlets or other publications purporting to be issued by public authority.
Newspapers and Periodicals	52.145	902(6)	Printed materials purporting to be newspapers or periodicals.
Trade Inscriptions and the Like	52.155	902(7)	Inscriptions, signs, tags or labels purporting to have been affixed in the course of business and indicating ownership, control or origin.
Acknowledged Documents	52.165	902(8)	Documents accompanied by a certificate of acknowledgment of a notary public or officer authorized by law to take acknowledgments.

Subscribing Witness' Testimony Unnecessary

“The testimony of a subscribing witness is not necessary to authenticate a writing unless required by the laws of the jurisdiction whose laws govern the validity of the writing.” (NRS 52.175, FRE 903)

Hearsay Exceptions

Hearsay is a statement, other than one made by the declarant while testifying at trial or hearing offered in evidence to prove the truth of the matter asserted.

Availability of Declarant Immaterial

EXCEPTION	NRS	FRE	DESCRIPTION
General Exception	51.075		A statement is not excluded if its nature and the special circumstances under which it was made offer assurances of accuracy not likely to be enhanced by calling the declarant as a witness.
Present Sense Impression	51.085	803(1)	A statement describing or explaining an event or condition made while the declarant was perceiving the event or condition, or immediately thereafter.
Excited Utterance	51.095	803(2)	A statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition.
Then Existing Mental, Emotional or Physical Condition	51.105	803(3)	A statement of the declarant's then existing state of mind, emotion, sensation or physical condition (intent, plan, motive, design, mental feeling, pain, and bodily health), but <i>not</i> a statement of memory or belief to prove the fact remembered or believed unless it relates to the execution, revocation, identification or terms of declarant's will.
Medical Diagnosis or Treatment	51.115	803(4)	Statements made for purposes of medical diagnosis or treatment and describing medical history, or past or present symptoms, pain or sensations, or the inception or general character of the cause or external source thereof insofar as reasonably pertinent to diagnosis or treatment.
Recorded Recollection	51.125	803(5)	A memorandum or record concerning a matter about which a witness once had knowledge but now has insufficient recollection to enable the witness to testify fully and accurately, shown to have been made or adopted by the witness when the matter was fresh in the witness' memory and to reflect that knowledge correctly. <i>If admitted, the memorandum or record may be read into evidence but may not itself be received as an exhibit unless offered by an adverse party.</i>
Regularly Conducted Activity	51.135	803(6)	Information, in any form, of acts, events, conditions, opinions, or diagnoses, made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted activity, , all as shown by the testimony of the custodian or other qualified witness, or by certification, <i>unless the source of information or method or circumstances of preparation indicate lack of trustworthiness.</i>
Absence of Entry of Records Kept in Accordance of Regularly Conducted Activity	51.145	803(7)	Evidence that matter is not included in the information, in any form, of a regularly conducted activity, to prove the nonoccurrence or nonexistence of the matter, if the matter was of a kind of which that information was regularly made and preserved, <i>unless the sources of information or other circumstances indicate lack or trustworthiness.</i>
Public Records and Reports	51.155	803(8)	Records, reports, statements or data compilations, in any form, of public officials or agencies, setting forth (A) the activities of the official or agency, or (B) matters observed pursuant to duty imposed by law, or (C) in civil cases and proceedings, factual findings resulting from an investigation made pursuant to authority granted by law, <i>unless the sources of information or other circumstances indicate lack of trustworthiness.</i>

Reports of Vital Statistics	51.165	803(9)	Records or data compilations, in any form, of births, fetal deaths, deaths, or marriages if the report thereof was made to a public office pursuant to requirements of law.
Absence of Public Record or Entry	51.175	803(10)	To prove the absence of a record, report, statement, or data compilation, in any form, or the nonoccurrence or nonexistence of a matter of which a record, report, statement, or data compilation, in any form, was regularly made and preserved by a public officer, agency or official, evidence in the form of a certification, or testimony, that diligent search failed to disclose the record, report, statement, or data compilation, or entry.
Records of Religious Organizations	51.185	803(11)	Statements of births, marriages, divorces, deaths, legitimacy, ancestry, relationship by blood or marriage, or other similar facts of personal or family history, contained in a regularly kept record of a religious organization.
Marriage, Baptismal, and Similar Certificates	51.195	803(12)	Statements of fact contained in a certificate that the maker performed a marriage or other ceremony or administered a sacrament, made by a clergyman, public official, or other person authorized by the rules or practices of a religious organization or by law to perform the act or within a reasonable time thereafter.
Family Records	51.205	803(13)	Statements of fact contained in family Bibles, genealogies, charts, engravings on rings, inscriptions on family portraits or the like.
Records of Documents Affecting an Interest in Property	51.215	803(14)	The record of a document purporting to establish or affect an interest in property, as proof of the content of the original recorded document and its execution and delivery by each person by whom it purports to have been executed, if the record is a record of public office and an applicable statute authorizes the recording of documents of that kind in that office.
Statements in Documents Affecting an Interest in Property	51.225	803(15)	A statement contained in a document purporting to establish or affect an interest in property if the mater stated was relevant to the purpose of the document, unless dealings with the property since the document was made have been inconsistent with the truth of the statement or the purport of the document.
Statement in Ancient Documents	51.235	803(16)	Statements in a document in existence twenty years or more the authenticity of which is established.
Market Reports, Commercial Publications	51.245	803(17)	Market quotations, tabulations, lists, directories, or other published compilations, generally used and relied upon by the public or by persons in particular occupations.
Learned Treatises	51.255	803(18)	To the extent called to the attention of an expert witness upon cross or relied upon by the expert witness in direct, statements contained in published treatises, periodicals, or pamphlets on a subject of history, medicine, or other science or art, established as a reliable authority by the testimony or admission of the witness or by other expert testimony or by judicial notice.
Reputation Concerning Personal or Family History	51.265	803(19)	Reputation among members of a person's family by blood or marriage, or among a person's associates, or in the community, concerning a person's birth, marriage, divorce, death, legitimacy, relationship by blood, or marriage, ancestry, or other similar fact of personal or family history.
Reputation Concerning Boundaries or General History	51.275	803(20)	Reputation in a community, arising before the controversy, as to boundaries of or customs affecting lands in the community, and events of general history important to the community or State or nation in which the community is located
Reputation as to Character	51.285	803(21)	Reputation of a person's character among associates or in the community.

Judgment of Previous Conviction	51.295	803(22)	Evidence of a final judgment, entered after a trial or upon a plea of guilty (not <i>nolo contendere</i>), adjudging a person guilty of a crime punishable by death or imprisonment in excess of one year, to prove any fact essential to sustain the judgment, but not including, when offered by the Government in a criminal prosecution for purposes other than impeachment, judgments against persons other than the accused. The pendency of an appeal may be shown but does not affect admissibility.
Judgment as to Personal, Family, or General History, or Boundaries	51.305	803(23)	Judgments as proof of matters of personal, family or general history, or boundaries, essential to the judgment, if the matters would be provable by evidence of reputation.

Declarant Unavailable

- Unavailability as a witness includes situations in which the declarant is:
 - Exempted by ruling of the court on the ground of privilege from testifying concerning the subject matter of the declarant’s statement; or
 - Persistent in refusing to testify despite an order of the court to do so; or
 - Unable to be present or to testify at the hearing because of death or then existing physical or mental illness or infirmity; or
 - Absent from the hearing and beyond the jurisdiction of the court to compel appearance and the proponent of the declarant’s statement has exercised reasonable diligence but has been unable to procure the declarant’s attendance or take the declarant’s deposition.
- A declarant is not “unavailable as a witness” if exemption, refusal, inability, or absence is due to the procurement or wrongdoing of the proponent of the declarant’s statement for the purpose of preventing the witness from attending or testifying. (NRS 51.055; FRE 804(a))

EXCEPTION	NRS	FRE	DESCRIPTION
Former Testimony	51.325	804(b)(1)	Testimony given as a witness at another hearing of the same or a different proceeding, or in a deposition taken in compliance with the law in the course of another proceeding, if the declarant is unavailable as a witness, and if the proceeding was different, the party against whom the former testimony is offered was a party or is in privity with one of the former parties and the issues are substantially the same.
Statement Under Belief of Impending Death	51.335	804(b)(2)	A statement made by a declarant while believing that the declarant’s death was imminent.
Statement Against Interest	51.345	804(b)(3)	A statement which was at the time of its making so far contrary to the declarant’s pecuniary or proprietary interest, or so far tended to subject the declarant to civil or criminal liability, or so far tended to render invalid a claim by the declarant against another, or so far tended to make the declarant an object of hatred, ridicule or social disapproval, that a reasonable person in the declarant’s position would not have made the statement unless believing it to be true. A statement tending to expose the declarant to criminal liability and offered to exculpate the accused is not admissible unless corroborating circumstances clearly indicate the trustworthiness or the statement.

Statement of Personal or Family History	51.355	804(b)(4)	A statement concerning the declarant's own birth, marriage, divorce, legitimacy, relationship by blood or marriage, ancestry or other similar fact of personal or family history, even though declarant had no means of acquiring personal knowledge of the matter stated; or A statement concerning the foregoing matters, and death also, of another person, if the declarant was related to the other by blood, adoption, or marriage or was so intimately associated with the other's family as to be likely to have accurate information concerning the matter declared.
Unavailability or Inability of Child to Testify	51.385		A statement made by a child under the age of 10 years describing any act of sexual conduct performed with or on the child or any act of physical abuse of the child is admissible in a criminal proceeding regarding that act if the court finds that the time, content and circumstances of the statement provide sufficient circumstantial guarantees of trustworthiness and the child testifies or is unavailable or unable to testify. The Court shall consider specific factors to determine trustworthiness.

RECENT NOTABLE EVIDENCE/FAMILY LAW CASES

Sullivan v. Sullivan, No. 87424-COA, Court of Appeals of Nevada, filed June 6, 2024 (“protecting the interests of a nonlitigant child takes precedence over enforcing procedural rules, or even the law itself”) (“districts courts may, when necessary, supersede standard procedure when considering evidence relevant to its custody modification analysis”) (untimely report admitted finding “best interest should have outweighed potential deterrent effect of excluding [untimely report]” where risk of trial by ambush was minimal).

Abid v. Abid, 133 Nev. 770, 406 P.3d 476 (2017) (“The court's duty to determine the best interests of a child must outweigh the policy interest in deterring illegal conduct between parent litigants”).

Nance v. Ferraro, 134 Nev. 152, 153, 418 P.3d 679, 681 (Ct. App. 2018) (stating that when the child's best interest is at stake, “it may at times be necessary for the district court to review ... evidence that underpinned its previous rulings”).

Pavon v. Pavon, No. 83376-COA, Court of Appeals of Nevada filed March 24, 2023 (consideration of a nolo contendere plea is inappropriate under NRS 48.125).

In the Matter of the Guardianship of the Person and Estate of Ida Rubin, 137 Nev. Adv. Op. 27, 491 P.3d 1 (2021) (physician's certificate in support of guardianship petition may contain hearsay, and in-person evaluation of the proposed protected person not required).

Kurz v. Anthony, No. 83231-COA, Court of Appeals of Nevada, filed March 23, 2022 (discussing business records versus public records exceptions to the hearsay rule).

Ram v. Kiran, No. 87615-COA, Court of Appeals of Nevada, filed June 11, 2024 (requiring timely objections on the record) (discussion regarding parent's failure to allege what the children would have stated had they testified or been interviewed).

Rowberry v. Rowberry, No. 81118-COA, Court of Appeals, filed August 18, 2021 (evidence produced after the close of discovery admitted

without objection not subject to challenge on appeal) (hearsay not objected to at trial not subject to challenge on appeal).

Franklin v. Franklin, No. 84334, Supreme Court of Nevada, filed December 4, 2023 (discussion regarding requirements for authentication of photograph) (discussion regarding excluded evidence not part of record on appeal and "that appellant bears the responsibility of ensuring an accurate and complete record on appeal and that missing portions of the record are presumed to support the district court's decision").

In The Matter Of The Guardianship Of The Person And Estates Of C.T.F. And P.G.S, No. 83443-COA, Court of Appeals of Nevada, filed March 23, 2022 (discussion regarding review of DCFS reports by Court in camera as a possible violation of hearsay rules).

In The Matter Of The Guardianship Of The Person Z.M.P, Nos. 80818-COA, 81119-COA, Court of Appeals of Nevada, filed May 25, 2021 (court-mandated investigator's testimony or statements appearing in a report not hearsay).

Kuo v. Lan, No. 84506-COA, Court of Appeals of Nevada, filed February 15, 2023 (citing NRCP 61 "Unless justice requires otherwise, no error in admitting or excluding evidence—or any other error by the court or a party— is ground for granting a new trial, for setting aside a verdict, or for vacating, modifying, or otherwise disturbing a judgment or order. At every stage of the proceeding, the court must disregard all errors and defects that do not affect any party's substantial rights").

Monahan v. Monahan, No. 80390-COA, Court of Appeals of Nevada, filed March 25, 2021 ("The purpose of discovery rules is to take the surprise out of trials of cases so that all relevant facts and information pertaining to the action may be ascertained in advance of trial. Permitting an expert witness to testify outside the scope of the written report can, in some circumstances, constitute an abuse of discretion").

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