

# **Nuts & Bolts of Divorces**

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# OUTLINE:

- Types of Actions
- Jurisdiction
- Procedure
- Parenting
- Assets/Debts
- Maintenance
- Child Support

# TYPES OF ACTIONS

- Dissolution of Marriage ("Divorce")
- Legal Separation
- Declaration of Invalidity ("Annulment")
- Dissolution of Civil Union

CO is no-fault, except for some annulment grounds.

# COMMON LAW MARRIAGE:

## Requirements

1. Cohabitation.
2. Agreement to be husband and wife.
3. "Open assumption of a marital relationship."

*People v. Lucero*, 747 P.2d 660.

No one factor on its own sufficient - requires proof of all three.

# COMMON LAW MARRIAGE:

## Evidence

Preponderance of Evidence. *Lucero*.

- Tax returns
- Affidavits/health insurance, etc
- Joint finances/ownership of property
- Ceremony
- Refer to Husband/Wife
- Wife takes Husband name

Checklist - Mar 2005 *Colorado Lawyer* Article.

# ANNULMENT

**Subject Matter Jurisdiction** if marriage in CO, or domicile 30 days. CRS 14-10-111(7).

**Grounds.** CRS 14-10-111(1):

- Lack of capacity to consent
- Undisclosed physical incapacity to consummate
- Minor
- Duress
- Jest/Dare
- Prohibited by law - bigamy, ancestor/descendent, niece/nephew, sibling

# **CIVIL UNION**

**“In re: the Civil Union of...” CRS 14-10-105**

**Use UDMA. CRS 14-10-106.5**

**Jurisdiction.** CO retains over civil union entered into in CO, even if parties left state. CRS. 14-10-106.5(1)

**Out of State Same-Sex Marriage** - dissolve as a civil union. CRS 14-15-116

# JURISDICTION:

## Personal

**Full Jurisdiction** - personal service in CO per CRCP 4, or consent

**Maintenance/Support.** Obligee maintains continuous matrimonial domicile after obligor left state. Long-arm statute, CRS 13-1-124(1)(e)

**Property in CO.** CO has *in rem* jurisdiction, even w/o personal jurisdiction over respondent. *IRM Gercken*, 706 P.2d 809



# JURISDICTION:

## Divorce & Separation

**Domicile** in CO 90 days. CRS 14-10-106(1)(a)(I)

**Military** stationed in CO, w/o more, is insufficient. *Viernes v. District Ct*, 509 P.2d 306. Dual military is tough!

**Cannot waive.** *People ex rel. Garner v. Garner*, 33 P.3d 1239

# **JURISDICTION:**

## **Child Custody**

**Home-State Jurisdiction** where children last lived for 6 mos. UCCJEA, CRS 14-13-201(1)(a)

**Emergency Temporary Jurisdiction**, if child in CO, only until home state can act. CRS 14-13-204.

**Exclusive, Continuing Jurisdiction** if one parent or child remains in state. CRS 14-13-102.

**Personal Jurisdiction Over Other Parent** not required. CRS 14-13-201(3)

# JURISDICTION:

## Child Support

- Personal service (if not in CO for custody proceeding CRS 14-13-109(1)).
- Previously lived in CO with child
- Previously lived in CO & paid support
- Child in CO as result of other's activities
- Conceived in CO
- Any other reason consistent with Constitution.

UIFSA, CRS 14-5-201.

# JURISDICTION: Military Retirement

Uniformed Services Former Spouses Protection Act, 10 USC 1408(c)(4) requires:

1. Residence not due to military orders,
2. Domicile, or
3. Consent

Federal law deprives court of subject matter jurisdiction, and preempts state law. *IRM Akins*, 932 P.2d 863

# PROCEDURE:

1. Obtain forms [www.courts.state.co.us](http://www.courts.state.co.us)
2. Summons & Petition
3. Financial Disclosures
4. Initial Status Conference
5. Temporary Orders
6. Mediation/Settlement Conferences
7. Permanent Orders

# **PROCEDURE:**

## **Injunction Upon Service of Process**

Per CRS 14-10-107(4)(b)(I), cannot:

- Conceal/transfer/encumber assets
- Molest/disturb peace of other
- Remove children w/o consent/order, or
- Cancel/modify/allow to lapse insurance policy (health, homeowner/renter, auto)

# **PROCEDURE:**

## **Financial Disclosures**

Following due within 42 days of service. CRCP 16.2(c)(1)(E), and Forms 35.1 & 35.2:

- Sworn Financial Statement
- Income Tax Returns (3 yrs)
- Personal/Business Financial Statements & loan applications (3 yrs)
- Real Estate Documents
- Debt/Bank/Asset Statements (most recent)
- Income documentation (3 mos)

# **PROCEDURE:**

## **Initial Status Conference**

- Conducted with domestic court facilitator (except Div Y)
- All parties & clients must attend, unless Stip CMO
- Conduct within 42 days. CRCP 16.2(c)(1)(E)
- Sets forth deadlines for disclosures, experts
- Sets Temporary Orders hearing, if requested
- Emergency matters. CRCP 16.2(c)(3) - theoretically



# **PROCEDURE:**

## **Temporary Orders**

**Timeline.** Typically 3-6 weeks after ISC

**Duration.** One hour

**Temporary powers, per CRS 14-10-108:**

- Maintenance/Support
- Allocation of parental responsibilities
- Payment of debts
- Use of property/residence
- Atty Fees per CRS 14-10-119?

# **PARENTING:**

## **Decision-Making**

- **Major decisions** - typically joint
- **Day-to-day decisions** - typically parent with kids
- **Status quo or "norm"** - typically parent trying to go against has tough road

## **CRS 14-10-124(1.5)(b) Factors:**

- Ability to make joint decisions
- Mutual system of values, etc
- Promote more contact between child & parent
- Child abuse/neglect
- Spousal abuse

# PARENTING:

## Schedule

Statutory criteria in CRS 14-10-124, but reality is that parents can generally expect equal time, except:

- Pre-school child, especially infants
- Teenager with expressed wishes
- "Unfit" parent (drugs/alcohol, abuse, criminal history)
- Terrible parent/child relationship
- Work nights or unusual hours
- Not in close proximity (about 45 mins?)

# PARENTING:

## Long-Distance Schedule

Typically, with school-age kids, out-of-state parent can expect 3-4 trips/yr:

- **Spring/Fall break** - alternate or every break
- **Summer** - Up to 2/3, as is age-appropriate
- **Thanksgiving week** - alternate
- **Christmas break** - alternate, or half
- **Other weekends** - at own expense

# ASSETS/DEBTS:

## Definition of Marital Property

CRS 14-10-113(2), property acquired during marriage except:

- Gift/inheritance
- Exchange of separate property (but tracing)
- Acquired after decree of legal separation
- Excluded by agreement of parties.

Gifts (excl tangible personal prop) between spouses are marital, clear & convincing to rebut. CRS 14-10-113(7)

# ASSETS/DEBTS:

## Separate Property

Only original equity is separate, not:

- Income. *IRM Foottit*, 903 P.2d 1209
- Increase in value. CRS 14-10-113(4). Value each asset in "basket" individually. *IRM Krejci*, 2013 COA 6
- Paydown of debt/mortgage. *IRM Burford*, 26 P.3d 550
- Jointly-titled property. *IRM Balonson*, 25 P.3d 28
- Tracing requirement. *IRM Seewald*, 22 P.3d 580

# ASSETS/DEBTS:

## Division

Equitable division, per CRS 14-10-113(1), considering:

- Contributions of spouses
- Property set aside
- Economic circumstances, especially home
- Contribution of separate property
- Dissipation. *IRM Jorgensen*, 143 P.3d 1169, *IRM Shapiro*, 176 P.2d 363, *IRM Amich*, 192 P.2d 432

Value as of date of decree. CRS 14-10-113(5)

# ASSETS/DEBTS:

## Specific Examples

- **Pensions** - use time-rule formula. *IRM Hunt*, 909 P.2d 525
- **Social Security** - economic circumstance, not asset. *IRM Anderson*, 252 P.3d 490
- **Stock Options** - *IRM Balanson*, 25 P.3d 28
- **Vacation Time** - no speculation. *IRM Cardona*, 09 COA 1996
- **Personal Injury award** - *IRM Fain*, 794 P.2d 1086
- **Frequent Flyer Miles**, etc.



# ASSETS/DEBTS:

## Military Retirement

- **Payments in lieu of retirement.** *IRM Heupel*, 936 P.2d 561
- **VA Disability** - No, *IRM Franz*, 831 P.2d 917. But indemnify for post-dissolution waiver. *IRM Warkocz*, 141 P.3d 926
- **PDRL Under 20 years** - No, *IRM Williamson*
- **TDRL Over 20 years** - No, *IRM Poland*, 264 P.3d 647
- **Survivor Benefit Plan** - Court can order premium shared. *IRM Payne*, 897 P.2d 888

# ASSETS/DEBTS:

## Allocation of Debts

- **Equitable** ≠ **equal**. Court looks at ability to pay, so not unusual for higher income earner to be allocated more debt, especially if marital estate is net negative.
- **Post-separation debt** often allocated to spouse who incurred it, unless, e.g., not receiving adequate support.
- **Student Loans**. *IRM Speirs*, 956 P.2d 622

# **MAINTENANCE:**

## **Threshold**

**Threshold, per CRS 14-10-114(3)**

- Lacks sufficient property to provide for reasonable needs
- Unable to support self through appropriate employment or is parent of child with special needs or under 30 mos.

# **MAINTENANCE:**

## **Statutory Factors**

**Factors, per CRS 14-10-114(4)**

- Financial resources of party seeking maintenance
- Time necessary to find approp employment/edu
- Standard of living during marriage
- Duration of Marriage
- Age/Physical Condition
- Ability of Obligor to Pay

# MAINTENANCE:

## Temporary Maintenance

Presumptive formula when combined incomes below \$75K per CRS 14-10-114(2):

40% higher income - 50% lower income

Example:

H at \$4000/mo, W at \$1500

$\$1600 - \$750 = 850$

Maintenance not self-executing - must be per court order/agreement.

# MAINTENANCE:

## Temporary Military Support

**Army:** AR 608-99 requires payment of BAH-II-With, unless (1) higher income, (2) substantiated abuse, (3) Jail, (4) family housing, (5) 18 mos.

Examples: SGT: \$842.70, CPT: \$1154

**Air Force:** AFI 36-2906 requires "adequate support to family members"

NOT substitute for court order.

# MAINTENANCE:

## Post-Decree

- Currently no formula, so just apply factors
- "Anderson Formula" is  $\frac{1}{3}$  of difference between incomes for  $\frac{1}{3}$  duration of marriage
- Varies significantly between judges
- Generally, need about 5 yrs of marriage, or other sacrifice (kids, leave career to move)
- Generally, "lifetime" maintenance (until retirement) when close to 30 years of marriage
- Terminates upon death or remarriage

# MAINTENANCE:

## HB 13-1058

- **Status:** In conference committee, likely to pass
- **Factors:** adds more specific factors
- **Applicability:** "advisory guideline" for marriages of 3+ years and combined incomes up to \$240K
- **Amount:** 40% of higher - 50% of lower, but capped at 40% of combined incomes
- **Duration:** chart depends upon length of marriage, starting at 31% for 36 mos, increasing by 1/6% per month until caps at 50% at 150 mos.
- **Terminates** upon death, remarriage, end of term, order
- **Reconsider** upon full retirement age



# CHILD SUPPORT:

## General

- **Child Support Guidelines** - apply to all cases
- **Worksheet:**  
[www.courts.state.co.us/Forms/Forms\\_List.cfm?Form\\_Type\\_ID=94](http://www.courts.state.co.us/Forms/Forms_List.cfm?Form_Type_ID=94)
- **Children** - under 19, high school, or disabled
- **College expenses** - cannot be ordered unless in existing agreement/order
- **Adjustments** - Day care, medical, extracurricular
- **Income**
  - Only primary job, not voluntary OT or second job
  - Impute if voluntarily un- or under-employed
  - Don't impute if primary caregiver for child under 30 mos or in good faith higher education

# CHILD SUPPORT:

## Examples

H = 3000/mo, paying \$200 health

W = \$1347 min wage

	<b>1 child</b>	<b>2 children</b>	<b>1 child \$500 care</b>	<b>2 children \$500 care</b>
<b>Equal Time</b>	141	233	428	460
<b>H 120 nts</b>	322	494	608	723
<b>H 90 nts</b>	426	646	713	874