



FAMILY LAW HANDBOOK

THE MICKLIN LAW GROUP

A little about Brad...

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Following receipt of his juris doctorate degree, Brad served as a Superior Court judicial law clerk to the Honorable Eugene H. Austin, J.S.C. Brad also performed complex civil litigation with David Kessler & Associates, L.L.C. for several years before opening his private practice. Mr. Micklin now concentrates his practice in divorce, family law cases and estate planning.

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Introduction to Family Law

Family law addresses legal issues that could directly affect your family, such as divorce, alimony, child custody or child support. While these can be emotionally challenging and stressful situations to resolve, we believe that your experience in family court can be improved by having a better understanding of the process.

This manual is designed to help demystify your experience in the family law courts. In the following pages, we provide brief explanations for many of the legal terms you may encounter. Understanding the language of the court will make it easier for you to work with your attorney and allow you to focus on the important elements of your case.



ORDERS

Introduction to Orders

An order is a document that states the decision of a judge or a court. As its name implies, orders are enforceable and are intended to determine some point or direct some steps in the proceedings. There are a variety of different orders that a judge might issue. The types of orders most common to family law are listed below.



Case Management Order

These orders are the result of a case management conference. At this conference, the court decides the issues that remain in a case and then schedules what needs to be completed to resolve these issues before a trial date. The case management order will often outline the dates for the exchange of financial information, for settlement conferences, for future case management conferences and for trial dates.

Judgment of Divorce

This is a Court Order signed by the judge divorcing the parties in a divorce case. It is referred to as a “JOD” or as an “AJOD.”

Consent Orders

These are written agreements made between the parties to the litigation, then signed by a judge and filed with the court. The purpose is to make the agreements enforceable so that if one party does not comply with the agreement, you can then use the court to enforce compliance.

Pendente Lite Orders

Pendente lite is Latin for, “while the matter is pending.” It refers to orders that are entered during a case before it has concluded. Most commonly, pendente lite orders involve questions of temporary support.

Post Judgment Orders

Sometimes issues arise after the initial case has been concluded. As the name implies, a post judgment order can be entered to address these issues.



Protective Orders

These orders are meant to protect sensitive information. They are entered by the court and sometimes, by agreement between the parties, to prevent certain information from being disclosed to others. Litigation may involve confidential or sensitive material, such as medical information or information regarding children, which may be crucial during litigation but so confidential that one or both of the parties want to ensure that it is not used by the other party or outside organizations.

Qualified Domestic Relations Orders

These orders may follow a divorce judgment and are commonly referred to as Q.D.R.O. (pronounced “quadros”). Their purpose is to divide retirement accounts, such as a pension. The order allows the plan to be divided into two separate accounts so that the “plan participant” (the employee) and the “alternate payee,” (the employee’s spouse) can have separate accounts thereby dividing the money between both spouses.

Qualified Medical Relation Order

Commonly called Q.M.R.O, this order involves obtaining or contacting insurance companies for medical and healthcare information. Normally, an insurance company can only disclose information regarding medical treatment, payment and insurance policy information to the insured, or the policy holder. In certain cases, the spouse of the policy holder needs to be able to obtain information from the insurance company to ensure proper treatment of medical issues for children, as well as to discuss and resolve payment issues.

Universal Order

A universal order is a form that the Court prepares following a decision. While it does not contain all of the decisions, it is used by the Court to put some orders in writing.

DISCOVERY

Introduction to Discovery

Discovery takes place in the pre-trial phase of a lawsuit when each party can obtain information from the opposing party. We've listed a number of different ways the parties can seek to secure this information. If discovery requests are objected to, the requesting party may file a motion asking the court to compel, or force, the other party to participate.





Appraisals and Evaluations

These are third party evaluations used to estimate the value of different assets such as real estate, business interests, stocks, bank account and other similar investments.

Comparative market analysis

This is an informal real estate appraisal commonly used in place of a formal appraisal. The market analysis is usually conducted by a real estate agent who first identifies properties of similar location and size and then compares them to recent homes sold. This information is the basis for estimating the likely sales price of a piece of real estate involved in litigation.

Depositions

Depositions are face-to-face questioning, taken under oath by the opposing party outside of court. The answers are transcribed by a stenographer and may be used in court if the person being deposed gives different information or testimony at a later hearing.

Interrogatories

Also known as a Request for Further Information, this is a set of written questions posed to the opposite party that must be answered truthfully, in writing, under the penalty of perjury, within 60 days of receiving them.

Notice to produce documents

This is a written request to provide the other party with specific documents regarding assets, debts and other issues of the case within 30 days of receiving notice.

Requests for admissions

These are written statements about certain facts of the case sent from one litigant to the opposing party, who are asked to admit or deny the statements.

Subpoenas

These are formal requests, served by the attorney representing any of the parties involved. There are two kinds of subpoenas:

- Duces Tecum requires the other person to produce certain documents at a certain time, such as credit card statements, bank accounts and tax returns.
- Ad Testificadum requires someone to come and testify under oath at a certain time and place.



PARTIES

Introduction to Parties

The different parties involved in court proceedings are referred to by common designations that reflect their role. Below is a list of the different Parties you are likely to find in Family Court.



Adversary

The other person or the other attorney in a lawsuit.

Clerk

A person or an office inside the Family Court who takes and files papers.

Defendant

The person who gets sued.

Law Guardian

An attorney who represents a child.

Parties

People involved in a lawsuit.

Plaintiff

The person who begins a lawsuit.

Third Party Plaintiff

When either the first plaintiff or first defendant adds a defendant to a lawsuit, they become a third party plaintiff.

PLEADINGS



Introduction to Pleadings

Pleadings are formal written documents or statements filed with the court that contain the respective position, or point of view, of each party. They are used to define the issues and narrow them down to the essentials as identified by each opposing side. By stating what claims and defenses are at issue, pleadings establish the issues to be decided by the court.

Signature

Answer

This is a response to a complaint. It is usually a general denial of most of the statements set forth in the complaint.

Affidavit of Insurance

This affidavit requires the person to inform the court about all of the insurance policies they have. The person must also certify that they have not and will not change insurance coverage, without court permission, while the case is pending.

Answer to Counterclaim

This refers to the plaintiff's answer to the defendant's counterclaim. It is usually a general denial of most of the statements made by the defendant in the defendant's counterclaim.

Case Information Statement

This document contains all of the financial facts for each party. It must be filed with the court when there is an issue of alimony, child support or equitable distribution. (See alimony, child support, and equitable distribution below.)

Complaint

A complaint is the first pleading filed in a lawsuit.



Counterclaim

A counterclaim is filed by the defendant and is part of the defendant's answer.

Entry of Default

When the defendant receives a copy of the plaintiff's complaint but does not file an answer or counterclaim 35 days after receiving it, the defendant is considered to have defaulted. The plaintiff's attorney can then file an entry of default.

Motion

A Motion is a written request from one of the parties in a lawsuit asking the court to give that person something by entering an order against the other person.

Motion for Litigant's Rights

The purpose of this type of motion is to enforce an earlier court order. It typically comes into play when one party did not do something they were ordered to by the court.

Notice of Equitable Distribution

This pleading, filed by the plaintiff in a divorce case, asks the court for everything the plaintiff wants the judge to give the plaintiff when the judge grants the divorce. It is filed when the Defendant does not answer the Plaintiff's complaint.

Parenting Plan

This pleading tells the judge what kind of parenting time or visitation you want to have with your children as well as what kind of parenting time or visitation you want the other party to have with your children.



Position Papers

These papers, filed by the attorneys before a trial, tell the judge how you want the case to be decided, what the facts of the case are, the documents you will be presenting at trial, and the witnesses who will be called to trial.

Property Settlement Agreement, Inter-spousal Agreement or Settlement Agreement

This document details the agreement between the two people in a divorce case when they have worked out their issues. The agreement gets filed with the court and resolves all issues between the two parties. The court does not determine whether or not the agreement is fair. It only decides whether both people agree to and understand the agreement.

Statement of Issues

This pleading is filed with a panel of attorneys that the court assigns to hold an early settlement panel or ESP. (See ESP below.) The statement of issues sets forth all the issues of a case and states your position for how they should be resolved.

Trial Brief

This document is submitted by the lawyers before a trial date and indicates the facts of the case, the position of each party and the law that will be used to support their respective position.

HEARINGS



Introduction to Hearings

A court hearing is a gathering in a courtroom before a judge with the purpose of conducting some type of legal procedure. A hearing is different from a trial in that it is usually shorter and often less formal. The following is a list of hearings most common to family court.

Case Management Conferences

These conferences are scheduled throughout the litigation process. The purpose is for the court to determine what issues have been resolved, what issues are outstanding and what court hearings are necessary to resolve these issues prior to trial. The court will use that information to establish time frames, schedule upcoming hearings and select a trial date.

4 Way Conference

The four people attending this conference include the plaintiff, the defendant, and each of their lawyers. The meeting is held at one of the attorney's office with the purpose of discussing a settlement.

Contempt Proceedings

Contempt proceedings take place if one of the parties is noncompliant, or does not do something the court ordered them to do. Punishment for contempt can include arrest, financial sanctions, additional orders for relief or other forms of court ordered sanctions.

Default Hearings

These hearings are scheduled once a defendant has failed to file an answer to the divorce complaint within the specified time frame. A default hearing closes out the defendant's ability to file an answer and allows the plaintiff to go forward with the divorce to request alimony, child support or equitable distribution on terms that they propose to the judge.



Early Settlement Panel or ESP

This is a confidential settlement conference where the court brings in local attorneys who are experienced in family law cases. Each person writes how they want the case to be settled and gives that information to the attorneys on the panel. The attorneys review the submissions and make a recommendation for how the parties should settle their case. If both people accept the panel's recommendation, the case is settled and the parties are divorced. If the parties do not accept the recommendation, the case continues and all information from the hearing is confidential. This hearing only occurs in divorce cases.

Economic Mediation

The purpose of this hearing is to resolve the economic issues in the case, such as equitable distribution of marital property and support. You and your spouse choose a lawyer who you work with to create your own mutually acceptable agreement. This option follows the early settlement panel and only takes place if the early settlement panel is unsuccessful.

Final Hearings

In family court, a final hearing may be scheduled to address two situations. It may take place after the entry of a default pleading (when a defendant does not respond to a complaint). At such a hearing, the judge makes a determination as to whether or not to award alimony, child support or equitable distribution. A final hearing may also take place when cases are settled. In that instance, the court's role is to determine that the agreement is reasonable and not the result of undue pressure or coercion. The court does not decide whether the settlement was fair, only that both parties freely agreed to it.



Family Mediation

This process provides the opposing parties with an opportunity to resolve their differences and reach their own agreement outside of the courtroom. With the help of a trained mediator, families are encouraged to resolve as many of the economic and custody issues possible. Family mediation is mandatory but participants can use their own discretion as to whether they enter into an agreement or not. All discussions are highly confidential and cannot be used later in court.

Intensive Settlement Conferences

These conferences are court ordered meetings held at the courthouse. Participants include the plaintiff, the defendant and attorneys for both. All the participants are required to spend most, if not all day in settlement discussions. The judge does not attend but will meet with the attorneys to provide guidance during the day if requested. New Jersey requires at least one intensive settlement conference before a trial can be held.

Mediation

A court may encourage opposing parties in a lawsuit to resolve their issues themselves by ordering mediation. In these cases, a trained mediator is brought in to facilitate a meeting between both parties in the hopes of reaching a settlement outside of court. There are two types of mediation the court can order: family mediation and mediation for custody. Both forms are usually mandated by the court unless there is a final restraining order.

Motion Hearings

These hearings take place when a lawyer asks a court judge to review a case and then make a decision based on the evidence at hand. Attorneys can also request a case be dismissed. Motion hearings are granted by discretion of the judge after a motion has been filed. Oral argument or motion hearings will be held only if the judge believes that additional information or clarification is necessary.

Oral Argument

When an attorney speaks before a judge in a courtroom and presents the legal reasons to support his/her case, it is called an oral argument.



Parenting Custody Mediation

This is a court-ordered mediation session that is required at the beginning of all divorce cases in an attempt to remove custody issues from a judge's decision. The purpose is to encourage the parties to discuss and set a parenting schedule themselves.

Parenting Workshop

When children are involved in a divorce case, often the court's first step is to order both parties to participate in this workshop. During the workshop, the parents view a videotape discussing the types of issues they will likely face as they litigate their divorce case. The intent is to encourage both parents to take an amicable approach as they discuss issues such as parenting time and custody, and do so in a way that does not hurt their child in the process.

Plenary Trial

This is a short but complete trial. Witnesses are called to testify and trial briefs are normally submitted but it does not last as long as a trial. These trials are held when only a few issues need to be resolved.

Settlement Conferences

These meetings are usually held outside of the courthouse by opposing parties and their attorneys in an attempt to resolve issues, reach a settlement and thereby avoid going to court.

Status Conference

When a case management conference is held in the middle or end of a case, it may be called a status conference. As with the case management conference, the purpose is for the court to identify the remaining issues and schedule the actions necessary to resolve these issues.

Trials

These are final hearings in which opposing parties testify to the issues of the case and the judge makes the final decision.

MOTIONS



Introduction to Motions

A motion is an oral or written request made to the court requesting a ruling, or an order on a particular point. A motion can be made before, during or after a trial by anyone named in a court case on either side. It's a common court procedure for deciding issues that come up during the course of a lawsuit.

Certification

These are sworn statements by either the people who are involved in a lawsuit, witnesses to a lawsuit and, sometimes, attorneys. These statements are offered to support a formal request that is being made by that person, such as a motion.

Notice of Motion

This is a formal statement of the requests that a person gives to the judge, in effect, notifying the judge when they file a motion.

Notice to Litigants

This is a formal notice required by the rules of court that is attached to motions. It notifies the opposing party about how and when they must respond to the motion.



OTHER TERMS

An open book with many pages, symbolizing a collection of terms. The book is open, showing the edges of many pages. The background is a solid blue color.

The following is a collection of additional terms you may encounter in family court.

Alimony

Also known as spousal maintenance, this is money paid by one spouse to support the other spouse during and/or following a divorce. Alimony awarded in the divorce can be temporary, lasting for a limited time, or permanent, intended to continue into the future. Different from child support, alimony is paid by the “supporting spouse” to the “dependent spouse.” The general rule is that a spouse is dependent when he or she earns less money than the other spouse.

Appeal

This is an application file to a special court that reviews trial court decisions. When you have a case involving a divorce or custody matter, you go before a trial court judge. If you are unhappy with that decision, you can file an appeal to a higher court. There are two main kinds of appeals:

- **An appeal of right from final decisions** – this appeal can be filed for any final decision that you are displeased with so long as you file within 45 days from the time the court made its decision, even if you were not immediately notified.
- **An interlocutor appeal**—this allows you to appeal an issue that is decided while the case is still pending or before all of the final decisions have been made. You can only file if the appellate court gives you permission within 20 days from when you received the judge’s decision.





Adjournment

This is a request to move a scheduled date to another day. Adjournments are very common in motion hearings and are routinely granted.

Best Interest Report

This refers to a report conducted by the probation department of the court in custody cases. It normally deals with a historical interview of both parties, a home inspection, a work inspection, a police background check and each person's versions of the history of the case. It is used by the court to try to make a custody decision.

Chancery or Chancery Division

This is the name of the court that handles family part cases.

Child Support

This is the amount of money one parent, who does not have the children living with him/her most of the time, pays to the other parent.

Child Support Guidelines

These guidelines are a predetermined, mathematical computation adopted by New Jersey which determines how much one parent pays to the other parent for child support. The amount of child support is based, primarily, on both parties' incomes.

Contempt

Contempt is a person's failure to abide by a court order

Correspondence

This is a general term that is used to describe letters, faxes and memos sent among the different parties in a lawsuit.



Custody

This refers to the legal relationship between a parent and their child. There are different types of custody:

- **Legal Custody** refers to the parent who makes the important decisions regarding a child such as education, religion, medical treatments, residency and similar issues.
- **Physical Custody** refers to the parent with whom the child lives most of the time
- **Joint Custody** means that both people should be involved in the important decisions regarding the child and share physical custody of the child.
- **Sole Custody** is when only one parent is awarded custody of a child.
- **Primary and Secondary or Custodial and Non-Custodial** reference how much time or responsibility each parent has for the child. The primary or custodial parent is normally the parent that has the child living with them, whereas the secondary or non-custodial parent has parenting time or visitation with the children less often.

Note Regarding Custody: A parent's custodial or non-custodial, primary or secondary status does not affect legal custody issues. Only joint and sole custody decisions affect legal custody.

Docket number

This number is assigned by the court clerk who uses it to keep track of cases with a system known as a docket. Each new case is assigned a number which it will keep for as long as it takes to conclude. The number provides specific information about the case, such as the type of case, the county where it's taking place and the year it was filed.

Equitable Distribution

This term is used by courts when discussing how to divide assets and debts between a husband and wife in a divorce case. Equitable does not necessarily mean that assets and debts are divided equally. The court may use a more complex formula that takes into account many factors.

Exhibits

These are attachments to motions and pleadings that get filed with the court. Exhibits are usually copies of documents used to prove the allegations and statements made in the motions and pleadings.

Family Part

The specific division that handles primarily divorce, juvenile, custody and support cases.

Parenting Time

This is another word for visitation.

Restraining Order

Also known as an order of protection, this is a court order that restrains, or prevents one person from contacting the person requesting the order. If the court grants you a restraining order against someone, it can instruct that person to stay away from your home, workplace or school. A restraining order is enforced by the police and violation of this order is a criminal matter.

The impact of a divorce upon a family will vary greatly from case to case. No two cases or families are ever the same. While this guide is intended to give you an introduction to the family law legal system and the divorce process, nothing replaces a consultation with an experienced divorce attorney.

If you want to speak with an experienced attorney who is familiar with family law, call us at 973-562-0100. Our firm is focused exclusively on family law and estate planning.

Keep up on legal developments in divorce, family law and estate planning laws:

