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NCLE
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Post Divorce Modifications:

- I. Custody
 - II. Alimony
1. Preliminary Step: Back to the Basics
 - a. Drafting, Drafting, Drafting
 - b. Findings of Fact and Conclusions of Law
 - c. Review the Decree of Divorce
 2. Rules You Need to Know:
 - a. Utah Rules of Civil Procedure:
 - i. Rule 4: Process,
 - ii. Rule 5: Service and Filing of Pleadings and Other Papers,
 - iii. Rule 6: Time,
 - iv. Rule 7: Pleadings allowed...objection to commissioner's order,
 - v. Rule 12: Defenses and Objections
 - vi. Rule 65A and B: Injunctions and Extraordinary relief
 - vii. Rule 101: Motion practice before court commissioners and
 - viii. Rule 106: Modification of Divorce Decrees
 - b. Utah Council Rules of Judicial Administration
 - i. Rule 4-903: child's feelings and needs + parent's character and capacity
 3. Statutes You Need to Know
 - a. UCA 30-3-3 – Temporary Orders and temporary support
 - b. UCA 30-3-5(3) – continuing jurisdiction
 - c. UCA 30-3-10.4(1) – 2 step burden; shall file parent plan
 - d. UCA 30-3-10.8 and 10.9
 - e. UCA 30-3-33 and 30-3-35
 - f. UCA 30-3-5 (8) (g) et al.
 4. Custody Modifications
 - a. The Hogge-Becker preliminary burden and changed circumstances test
 - b. Orders entered by default or stipulation *cf.* orders entered post adjudication
 - c. Best interest factors: child's preference and needs + parent's character and capacity
 - d. Temporary orders
 5. Case law defining modification – custody – **not all inclusive**
 - a. Tucker v. Tucker, 910 P.2d 1209 (Utah 1996)
 - b. Elmer v. Elmer, 776 P.2d 599 (Utah 1989)
 - c. Kramer v. Kramer, 738 P.2d 624 (Utah 1987)
 - d. Hirsch v. Hirsch, 725 P.2d 1320 (Utah 1986)

- e. Moody v. Moody, 715 P.2d 507 (Utah 1985)
 - f. Becker v. Becker, 694 P.2d 608 (Utah 1984)
 - g. Hogge v. Hogge, 649 P.2d 51 (Utah 1982)
 - h. Shioji v. Shioji, 712 P.2d 197 (Utah 1985)
 - i. Sigg v. Sigg, 905 P.2d 908 (Utah Ct App 1995)
 - j. Behunin v. Behunin, 2005 UT App 459
 - k. Hudema v. Carpenter, 989 P.2d 491 (Utah Ct App 1999)
6. Alimony Modifications
- a. Continuing jurisdiction and non-modification or waiver of modification provisions
 - b. Substantial change in circumstances since entry of decree and not contemplated in the decree itself
 - c. Parties' stipulations, even when adopted and incorporated into the decree serve only as recommendation
 - d. Recognizing Kinsman: courts reluctance to overturn specific and knowing waivers of property distribution rights raising the burden from a mere changed circumstances to compelling reasons
7. Case law defining modification – alimony – **not all inclusive**
- a. Sill v. Sill, 2007 UT App 173
 - b. Willey v. Willey, 951 P.2d 226 (Utah 1997)
 - c. Noble, 761 P.2d 1369 (Utah 1988)
 - d. Land, 605 P.2d 1248 (Utah 1980)
 - e. Felt, 493 P.2d 620 (Utah 1972)
 - f. Callister, 261 P.2d 944 (Utah 1953)
 - g. Jones v. Jones, 139 P.2d 222 (Utah 1943)
 - h. Davis, 2001 UT App 327
 - i. Diener, 98 P.3d 1178 (Ut Ct App 2004)
 - j. Bayles, 981 P.2d 403 (Ut Ct App 1999)
 - k. Gates, 787 P.2d 1344 (Ut Ct App 1990)
 - l. Kinsman, 748 P.2d 210 (Ut Ct App 1988)
8. Most importantly – Don't assume you know the answer - ask a smarter family law attorney!!!
- a. Example: Policy and Practice Road Blocks