

**POST-DECREE MODIFICATION STANDARDS:
Parental Rights and Responsibilities, Child Support and Maintenance**

Kathryn McCord Beck
Beck Jonson & Nolan, PC
1536 Cole Blvd., Suite 150
Golden, CO 80401
303-278-3078
barristerbeck@msn.com

Marie Avery Moses
Kelly Garnsey Hubbell & Lass, LLC
1441 17th Street, Suite 300
Denver, CO 80202
303-296-9412
mmoses@kghllaw.com

MODIFICATION OF DECISION-MAKING AUTHORITY:

Standard for Modification of Decision Making Authority:

I. Statutory provisions:

C.R.S. §14-10-131(2): The court shall not modify a custody decree or a decree allocating decision-making responsibility unless it finds, upon the basis of facts that have arisen since the prior decree or that were unknown to the court at the time of the prior decree, that a change has occurred in the circumstances of the child or the child's custodian or party to whom decision-making responsibility was allocated **and** that the modification is necessary to serve the best interests of the child. *(It sounds like a best interest standard so far, right? Read on . . .)* **In applying these standards, the court shall retain the allocation of decision-making responsibility established by the prior decree unless:**

- (a) The **parties agree** to the modification;
- (b) The child has been **integrated into the family** of the petitioner **with the consent of the other party** and such situation warrants a modification of the allocation of decision-making responsibilities;
- (b.5) There has been a **modification in the parenting time** order pursuant to section 14-10-129, that warrants a modification of the allocation of decision-making responsibilities;
- (b.7) A party has **consistently consented to the other party making individual decisions** for the child which decisions the party was to make individually or the parties were to make mutually; or
- (c) The retention of the allocation of decision-making responsibility would **endanger the child's physical health or significantly impairs the child's emotional development** and the harm likely to be caused by a change of environment is outweighed by the advantage of a change to the child.

II. Case Law

a. In re Marriage of McNamara, 962 P.2d 330 (Colo. App. 1998). The parties' *Separation Agreement* provided that parents had joint legal custody, equally shared parenting time, and there was no designated primary residential custodian. Each parent later sought sole custody. This amounted to a deferral of the child custody question—as a deferral, it left the parents in equal contact with the children and with equal authority over the children. Therefore, the proper standard for modifying custody was the “best interests of the child standard.” The Court held: Hence, we conclude that the application of section 14-10-131.5 [best interest] is limited to those situations in which the residential custody of the child will not be changed by the modification, and that section 14-10-131 [endangerment] is the standard to be applied whenever change of primary residential custody is at issue.

b. In re Marriage of Stewart, 43 P.3d 740 (Colo. App. 2002). Under *Permanent Orders* entered in 1996, parties were named joint legal and physical custodians of the children. In 2000, father filed a *Motion for Modification of “Joint Custody and Allocation of Parental Responsibilities.”* Father requested that he be named the children's primary residential parent. Magistrate denied the request having found that the children were not “endangered” by current arrangements.

Court of appeals reversed the magistrate, holding that the principles of *McNamara* still applied, despite 1998 statutory changes. Inclusion of the endangerment standard in §14-10-129 and §14-10-131 does not mandated a new rule. The Court held: Therefore, we hold that, in instances where the parties share equal parenting responsibilities, any subsequent modification of that arrangement is governed by the best interests standard. (again, deferral concept)

c. In re Marriage of Newell, ___ P.3d ___ (Colo. App. No. 06CA1795, July 10, 2008). *Separation Agreement* provided that child would live primarily with mother, and mother would have all decision-making responsibility except in the areas of surgical decisions, behavioral medication, and life-threatening conditions. Mother requested sole decision-making in all areas. Court correctly applied the “endangerment” standard to take away Father's decision-making authority in the three limited areas. Court was permitted to base this decision on evidence of the parties' lack of agreement and lack of cooperation in other areas of decision-making.

It would be constitutionally permissible for a court to enter orders prohibiting a parent from voicing concerns regarding the child's care and education upon a showing that the parent's exercise of free speech rights threatened the child with physical or emotional harm.

- d. In re Marriage of Chatten, 967 P.2d 206 (Colo. App. 1998). Mother awarded sole custody at time of Permanent Orders. Father filed *Motion to Modify Custody* asserting that child had been integrated into his home. Court defines “integration” as more than a mere expanded visitation. It includes the performance of normal parental duties, including washing clothes, providing meals, attending to medical needs, assisting with homework, and guiding the child physically, mentally, morally, socially and emotionally. A court should consider the identity of the person making the primary decisions regarding health care, education, religion and generally welfare. Additionally, the time spent with the parent must be of sufficient duration that the child has become settled into the home of that parent as though it were his or her primary home. Consider the totality of the circumstances not just the custodial parent's subjective intentions.

- e. In re Marriage of Rozzi, ___ P.3d ___, (Colo. App. No. 07CA0467, June 12, 2008). Parties entered into a *Parenting Plan* that provided for the allocation of parental rights until the minor child (age two) turned five years old. Mother filed a *Motion* requesting a modification of the allocation of decision-making responsibilities after the child turned 5. Court of Appeals did not resolve the dispute between the parents as to whether the best interests or endangerment standard applied in a situation where the prior allocation was only agreed upon until the child reached age 5. Appellate Court concluded that the lower Court had not made it clear which standard it had applied, therefore the Court of Appeals could not determine if the improper standard had been applied, and remanded the case. The Court held: If a parent subsequently requests a modification of decision-making responsibility under section 14-10-131(2), C.R.S.2007, he or she must demonstrate that, based upon facts that have arisen since the prior decree or that were unknown to the court at the time of the prior decree, a change has occurred in the circumstances of the child, the child's custodian, or the party to whom decision-making responsibility was allocated and that the modification is necessary to serve the best interests of the child. If the party seeking a modification of decision-making responsibility makes the necessary showing, the court must nevertheless retain the existing allocation of decision-making responsibility unless one of the circumstances set forth in subsections (a) through (c) is shown to exist.

Miscellaneous Issues:

I. Time for filing *Motions for Modification*:

- a. **C.R.S. §14-10-131(1):** If a motion for modification of a custody decree or a decree allocating decision-making responsibility has been filed, whether or not it was granted, **no subsequent motion may be filed within two years after disposition of the prior motion** unless the court decides, on the basis of affidavits, that there is reason to believe that a continuation of the prior decree of custody or order allocating decision-making responsibility may **endanger** the child's physical health or significantly impair the child's emotional development.

- b. **C.R.S. §14-10-129 (1.5):** see discussion below
- c. In the Interests of F.A.G., 148 P.3d 375, (Colo. App. 2006). Although Father filed a *Motion* requesting a “modification of parental responsibilities,” his *Motion* really only sought to modify parenting time. Accordingly, C.R.S. 14-10-131(1) did not apply to his *Motion* which in substance only sought a modification of parenting time.

II. Resolution of Disputed Joint Decisions:

- a. **C.R.S. §14-10-130(1):** Except as otherwise agreed by the parties in writing at the time of the decree concerning the allocation of parental responsibilities with respect to a child, the person or persons with responsibility for decision-making may determine the child's upbringing, including his or her education, health care, and religious training, **unless** the court, after hearing and upon motion by the other party, finds that, in the absence of a specific limitation of the person's or persons' decision-making authority, the child's physical health would be endangered or the child's emotional development significantly impaired
- b. Griffin v. Griffin, 699 P.2d 407 (Colo. 1985). *Separation Agreement* provided that “both parents shall fully and equally participate in the education of their child. Schools shall be selected jointly.” Father filed a *Motion* seeking to enforce the provisions regarding school selection and alleged that Mother intended to enroll the child in a Buddhist school over his objection. Father asked that the Court select the child’s school if the parties were unable to agree on a school. The Colorado Supreme Court concluded that the “joint selection of schools” provision was unenforceable, and that instead, the custodial parent retained the ultimate authority to select the child’s school pursuant to C.R.S. §14-10-130(1) which at the time provided that the “custodian” may determine the child’s upbringing.
- b. In re Marriage of Dauwe, 148 P.2d 282 (Colo. App. 2006). Parties had joint decision-making. Mother asked for authority to enroll children in therapy over Father’s objection. Father asserted that the trial court was required to make a finding of endangerment before modifying decision-making authority to allow Mother to enroll the children in therapy. The Court of Appeals disagreed; they noted that the lower Court did not change the allocation of decision making, rather, they concluded that the Court had resolved a long standing dispute concerning therapy, and, that the Court was not prohibited from resolving a major decision when the joint decision-makers were unable to do so.

MODIFICATION OF PARENTING TIME:

Standard for Modification of Parenting Time:

I. Statutory provisions:

C.R.S. 14-10-129(1)(a)(I) . . . [T]he court may make or modify an order granting or denying parenting time rights whenever such order or modification would serve the **best interests of the child**.

Standard for Modification of Primary Residence:

C.R.S. 14-10-129(1.5): If a motion for a **substantial modification of parenting time which also changes the party with whom the child resides a majority of the time** has been filed, whether or not it has been granted, **no subsequent motion may be filed within two years** after disposition of the prior motion **unless** the court decides, on the basis of affidavits, that the child's present environment may **endanger** the child's physical health or significantly impair the child's emotional development, **or**, that the party with whom the child resides a majority of the time is intending to relocate with the child to a residence that substantially changes the geographical ties between the child and the other party.

C.R.S. 14-10-129(2): The court shall not modify a prior order concerning parenting time that substantially changes the parenting time *as well as* changes the party with whom the child resides a majority of the time unless it finds, upon the basis of facts that have arisen since the prior decree or that were unknown to the court at the time of the prior decree, that a change has occurred in the circumstances of the child or the party with whom the child resides the majority of the time and that the modification is necessary to serve the best interests of the child. **(Again, sounds like best interests, but read on . . .)** In applying these standards, the **court shall retain the parenting time schedule established** in the prior decree **unless:**

- (a) The parties **agree** to the modification; or
- (b) The child has been **integrated into the family** of the moving party with the consent of the other party; or
- (c) The **party with whom the child resides a majority of the time is intending to relocate** with the child to a residence that substantially changes the geographical ties between the child and the other party. . . . ; or
- (d) The child's **present environment endangers the child's physical health or significantly impairs the child's emotional development** and the harm likely to be caused by a change of environment is outweighed by the advantage of a change to the child.

II. Case Law:

- a. In re Marriage of Newell, ___ P.3d ___ (Colo. App. No. 06CA1795, July 10, 2008). *Separation Agreement* provided that child would live primarily with Mother. Father requested that parenting time be modified so that the parties would share “roughly equal” parenting time. Appropriate standard for modification was “best interests” because Father did **not** seek to change the child’s residential household.
- b. In the Interests of F.A.G., 148 P.3d 375, (Colo. App. 2006). Father filed a *Motion* requesting a modification of parenting time, including primary residence, less than two years after entry of *Permanent Orders*. Father was not time-barred from filing the motion to modify primary residence by C.R.S. §14-10-129(1) because **“entry of permanent orders does not trigger the start of a two-year period during which motions for modification of parenting time are prohibited.”**
- c. In re Marriage of Kniskern, 80 P.3d 939 (Colo. App. 2003). *Separation Agreement* granted majority of parenting time to Mother, but only on the condition that Mother stopped alienating the children from Father. Father’s *Motion* to change the children’s residence was not a motion for modification. Accordingly, Father was not required to establish that the children were endangered to change their primary residence. Rather, Father’s *Motion* was in the nature of enforcing the provisions of the *Separation Agreement* and the only factual determination was whether mother continued to engage in alienating behavior.
- d. In the Interests of D.R.V-A. and D.G.V-A., 976 P.2d 881 (Colo. App. 1999). In paternity proceedings, the juvenile court must make and modify permanent orders respecting parenting time in accordance with the Uniform Dissolution of Marriage Act.

RESTRICTIONS ON PARENTING TIME:

I. Statutory Provisions:

- a. **C.R.S. 14-10-129(1)(b)(I):** The court **shall not restrict a parent's parenting time rights unless** it finds that the parenting time would **endanger the child's physical health** or significantly **impair the child's emotional development**.

- b. **C.R.S. 14-10-129(3)(a):** If a parent has been **convicted of any of the crimes listed** in paragraph (b) of this subsection (3) . . .or convicted of any crime in which the underlying factual basis has been found by the court on the record to include an act of domestic violence, as defined in section 18-6-800.3 (1), C.R.S., that constitutes a potential threat or endangerment to the child, the other parent, or any other person who has been granted custody of or parental responsibility for the child pursuant to court order may **file an objection to parenting time with the court**. The other parent or other person having custody or parental responsibility shall give notice to the offending parent of such objection . . . and the offending parent shall have twenty days from such notice to respond. If the offending parent fails to respond within twenty days, the parenting time rights of such parent shall be suspended until further order of the court. If such parent responds and objects, a hearing shall be held within thirty days of such response. **The offending parent shall have the burden at the hearing to prove that parenting time by such parent is in the best interests of the child** or children.

- c. **C.R.S. 14-10-129(4):** A **motion to restrict parenting time** or parental contact with a parent which alleges that the **child is in imminent physical or emotional danger** due to the parenting time or contact by the parent shall be **heard and ruled upon by the court not later than seven days** after the day of the filing of the motion. Any parenting time which occurs during such seven-day period after the filing of such a motion shall be supervised by an unrelated third party deemed suitable by the court or by a licensed mental health professional, as defined in section 14-10-127 (1) (b). This subsection (4) shall not apply to any motion which is filed pursuant to subsection (3) of this section.

II. Case Law:

- a. In re Marriage of Hatton, 160 P.3d 326 (Colo. App. 2007). Pursuant to C.R.S. 14-10-129(1)(b)(I) and (2)(d), for parenting time to be restricted, a court must first find that the child is endangered by the parenting time. However, the court must then determine whether the restriction is in the best interests of the child. In applying the best interest standard, the trial court must consider whether there is a less detrimental alternative to ending all contact between the parent and the child.
- b. In re Marriage of Fickling, 100 P.3d 571 (Colo. App. 2004). Parents shared equal parenting time with child under *Temporary Orders*. Special Advocate recommended that Father only have 100 overnights per year at *Permanent Orders*. Father argued that this was a restriction of his parenting time—and that the Court would need to make a finding of endangerment to restrict his parenting time in that manner pursuant to C.R.S. §14-10-129(1)(b)(I). Court of Appeals disagreed. The Court held that: (1) Temporary (parenting) Orders do not grant “parenting time rights” that would necessitate application of higher “child endangerment” standard of proof to revise such orders, and thus such revision is governed by the best interests of the child standard, and (2) trial court did not abuse its discretion by reducing Father’s parenting time with child at *Permanent Orders* hearing.
- c. In re Marriage of West, 94 P.3d 1248 (Colo. App. 2004). Under a 1998 *Stipulation and Order*, Father had 93 overnights per year with the children. Father argued that an *Order* that reduced his parenting time by 14 overnights per year constituted a restriction on his parenting time for which a finding of endangerment was required. Court of Appeals determined that the quantitative and qualitative aspects of the proposed change, as well as the reason or reasons advanced for the change, must be considered before determining which modification standard applies. The Court concluded that reducing Father’s parenting time from eight weeks in the summer to six weeks was not the sort of restriction requiring application of the endangerment standard.
- d. In re the Interests of A.R.D. and K.F.D., 43 P.3d 632 (Colo. App. 2001). Father was convicted of incest with a daughter from a prior marriage. Probate Court (after death of mother) properly applied C.R.S. 14-10-129(3) to restrict Father’s parenting time with children on the basis of his prior conviction. Father had the burden of proving that parenting time was in the best interests of the children. Father then argued that the Court was required to apply a “clear and convincing evidence” standard before restricting his parenting time to protect his fundamental right to retain a relationship with his children. Court of Appeals disagreed with Father and held that the appropriate standard for restricting parenting time pursuant to C.R.S. 14-10-129(3) is a preponderance of the evidence.

- e. In re Marriage of Slowinski, ___ P.3d ___ (Colo. App. No. 05CA465, 05CA2523 & 06CA 1830, May 1, 2008). C.R.S. 14-10-129(4) is self-executing. The restriction on parenting time takes effect immediately and continues until the hearing, which must be held within seven days. If the trial court fails to conduct a hearing within seven days of the filing of a 14-10-129(4) motion, the automatic sanction of supervised parenting time terminates.

REMOVAL:

I. Statutory Provisions:

C.R.S. 14-10-129(1)(a)(II): In those cases in which a **party with whom the child resides a majority of the time is seeking to relocate with the child to a residence that substantially changes the geographical ties between the child and the other party**, the court, in determining whether the modification of parenting time is in the **best interests of the child**, shall take into account **all relevant factors**, including those enumerated in paragraph (c) of subsection (2) of this section. The party who is intending to relocate with the child to a residence that substantially changes the geographical ties between the child and the other party shall provide the other party with written notice as soon as practicable of his or her intent to relocate, the location where the party intends to reside, the reason for the relocation, and a proposed revised parenting time plan. A court hearing on any modification of parenting time due to an intent to relocate shall be given a priority on the court's docket.

C.R.S. §14-10-129(2)(c): The court **shall retain the parenting time schedule established in the prior decree unless:** The party with whom the child resides a majority of the time is intending to relocate with the child to a residence that substantially changes the geographical ties between the child and the other party. In determining whether the modification of parenting time is in the best interests of the child, the court shall take into account all relevant factors, including whether a party has been a perpetrator of spouse abuse . . . and all other factors enumerated in section 14-10-124(1.5)(a) and:

- (I) The reasons why the party wishes to relocate with the child;
- (II) The reasons why the opposing party is objecting to the proposed relocation;
- (III) The history and quality of each party's relationship with the child since any previous parenting time order;
- (IV) The educational opportunities for the child at the existing location and at the proposed new location;
- (V) The presence or absence of extended family at the existing location and at the proposed new location;
- (VI) Any advantages to the child remaining with the primary caregiver;
- (VII) The anticipated impact of the move on the child;
- (VIII) Whether the court will be able to fashion a reasonable parenting time schedule if the change requested is permitted; and
- (IX) Any other relevant factors bearing on the best interests of the child.

C.R.S. 14-10-129(1)(b)(II): The provisions of subparagraph (I) of this paragraph (b) [restricting parenting time] shall not apply in those cases in which a party with whom the child resides a majority of the time is intending to relocate with the child to a residence that substantially changes the geographical ties between the child and the other party

II. Case Law:

- a. In re Marriage of Ciesluk, 113 P.3d 135 (Colo. 2005). In resolving post-decree removal motions, **each parent shares equally in the burden** of demonstrating how the child's best interests will be impacted by the proposed relocation. Courts must consider all 21 factors set forth in C.R.S. 14-10-129 and 14-10-124(1.5)(a). The Court may decide that it is not in the best interests of the child to relocate with the majority time parent. Then, if the majority time parent still wishes to relocate, a new *Parenting Plan* will be necessary.
- b. In re Marriage of Dezalia, 151 P.3d 647 (Colo. App. 2006). *Separation Agreement* provided that parents would share joint decision-making and would equally share parenting time. Mother's request to relocate with children to Florida was granted and Father's parenting time was reduced. Father argued that because there was no primary residential parent, Mother's *Motion* should have been resolved under the endangerment standard of C.R.S. 14-10-129(1)(b)(I) rather than the best interests standard. Court of Appeals held that a reduction in parenting time resulting from the other parent's relocation is not to be construed as a restriction requiring application of the endangerment standard. Additionally, Court concluded that statutes must be construed to apply standards established in Ciesluk to resolve removal disputes, even when the parents previously equally shared parenting time.

MODIFICATIONS OF CHILD SUPPORT:

I. Statutory Provisions:

C.R.S. §14-10-122(1)(a): [T]he provisions of any decree respecting child support may be modified only as to installments accruing subsequent to the filing of the motion for modification and **only upon a showing of changed circumstances that are substantial and continuing** or on the ground that the order does not contain a provision regarding medical support, such as insurance coverage, payment for medical insurance deductibles and copayments, or unreimbursed medical expenses.

(b) Application of the child support guidelines and schedule of basic child support obligations set forth in section 14-10-115 to the circumstances of the parties at the time of the filing of a motion for modification of the child support order which results in **less than a ten percent change in the amount of support due per month shall be deemed not to be a substantial and continuing change** of circumstances.

(d) If maintenance or child support is modified pursuant to this section, the modification should be effective as of the date of the filing of the motion, unless the court finds that it would cause undue hardship or substantial injustice or unless there has been a mutually agreed upon change of physical custody as provided for in subsection (5) of this section. **In no instance shall the order be retroactively modified prior to the date of filing, unless there has been a mutually agreed upon change of physical custody.** The court may modify installments of maintenance or child support due between the filing of the motion and the entry of the order even if the circumstances justifying the modification no longer exist at the time the order is entered.

C.R.S. §14-10-122(3): Unless otherwise agreed in writing or expressly provided in the decree, provisions for the support of a child are terminated by emancipation of the child but not by the death of a parent obligated to support the child. When a parent obligated to pay support dies, the amount of support may be modified, revoked, or commuted to a lump-sum payment, to the extent just and appropriate in the circumstances.

C.R.S. §14-10-122(5): Notwithstanding the provisions of subsection (1) of this section, when a mutually agreed upon change of physical care occurs, the provisions for child support of the obligor under the existing child support order, if modified pursuant to this section, will be modified as of the date when physical care was changed.

C.R.S. §14-10-122(6)(a) . . . [T]he individual named as the father in the order **may file a motion to modify or terminate an order for child support . . . if genetic test results based on DNA testing . . . establish the exclusion of the individual named as the father in the order as the biological parent of the child** for whose benefit the child support order was entered.

(b) If the court finds pursuant to paragraph (a) of this subsection (6) that the individual named as the father in the order is not the biological parent of the child for whose benefit the child support order was entered and that it is **just and proper under the circumstances and in the best interests of the child**, the court shall modify the provisions of the order for support with respect to that child by **terminating the child support obligation** as to installments accruing subsequent to the filing of the motion for modification or termination, and the court may vacate or deem as satisfied, in whole or in part, unpaid child support obligations arising from or based upon the order determining parentage. . . .

(c) (I) A motion to modify or terminate an order for child support pursuant to this subsection (6) must be filed within **two years from the date of the entry of the initial order** establishing the child support obligation.

(II) (A) For orders entered before August 15, 2008, a motion to modify or terminate an order establishing child support pursuant to this subsection (6) must be filed on or before August 15, 2010.

(d) . . . [A] court order for child support shall not be modified or terminated pursuant to this subsection (6) if:

- (I) The child support obligor acknowledged paternity pursuant to section 19-4-105 (1) (c) or (1) (e), C.R.S., knowing that he was not the father of the child;
- (II) The child was adopted by the child support obligor; or
- (III) The child was conceived by means of assisted reproduction.

C.R.S. §14-10-115(13) Emancipation. (a) For child support orders entered on or after July 1, 1997, unless a court finds that a child is otherwise emancipated, emancipation occurs and child support terminates without either party filing a motion when the last or only child attains **nineteen years of age** unless one or more of the following conditions exist:

- (I) The parties agree otherwise in a written stipulation after July 1, 1997;
- (II) If the child is mentally or physically disabled, the court or the delegate child support enforcement unit may order child support, including payments for medical expenses or insurance or both, to continue beyond the age of nineteen;
- (III) If the child is still in high school or an equivalent program, support continues until the end of the month following graduation. A child who ceases to attend high school prior to graduation and later reenrolls is entitled to support upon reenrollment and until the end of the month following graduation, but not beyond age twenty-one.
- (IV) If the child marries, the child shall be considered emancipated as of the date of the marriage. If the marriage is annulled, dissolved, or declared invalid, child support may be reinstated.
- (V) If the child enters into active military duty, the child shall be considered emancipated.

II: Case Law:

- a. In re Marriage of Eaton, 894 P.2d 56 (Colo. App. 1995). Child support cannot be modified solely on the basis of statutory amendments.
- b. In re Marriage of Pugliese, 761 P.2d 277 (Colo. App. 1988).
- c. In re Marriage of Ludwig, 122 P.3d 1056 (Colo. App. 2005). *Separation Agreement* provided for scheduled reductions of child support on certain dates, combined with a formula for increases in child support should obligor's income increase. Regardless of the terms of the *Separation Agreement*, the trial court retained jurisdiction to modify the child support based on a substantial and continuing change of circumstances.
- d. In re Marriage of Chalot, 112 P.3d 47 (Colo. App. 2005). College expenses may be modified under UMDA in the same manner as child support. It does not matter that the *Order* for payment of college expenses may have originated in a *Separation Agreement*. The parties cannot preclude or limit subsequent court modification of child support or allocation of college expenses. To modify an obligation to pay college expenses, party must show a substantial and continuing change of circumstances. It is not sufficient to allege that a change in statute warrants modification without a change of circumstances. Modification is retroactive only to the date of filing a motion for modification.
- e. In re Marriage of Green, 93 P.3d 614 (Colo. App. 2004). Wife filed a verified motion for entry of judgment for unpaid child support. Four years later, Husband filed a *Motion to Modify Child Support* retroactive to a date prior to entry of the verified judgment. Husband sought this retroactive modification based on a mutually agreed upon change of physical custody. Because statute does not place any sort of time limit for obtaining a retroactive modification of child support based on a physical change of custody, a support judgment is also subject to retroactive modification.
- f. In re Marriage of Schmedeman, ___ P.3d ___ (Colo. App. No. 06CA0550,
g. July 3, 2008). Prior version of C.R.S. §14-10-115(1.6) provided that child support terminated automatically when "the child" reaches nineteen years of age. Court of Appeals held that this statute did not allow for a retroactive modification to the date that the child turned age 19 when there were younger children for which child support was also ordered. Under such circumstances, obligor had the burden to show that a reduction is justified. Statute was modified in August 2006 to clarify that "emancipation occurs and child support terminates without either party filing a motion when the last or only child attains nineteen years of age."

MODIFICATION OF MAINTENANCE:

I. Statutory Provisions:

C.R.S. §14-10-122(1)(a): [T]he provisions of any decree respecting maintenance may be modified only as to installments accruing subsequent to the motion for modification and only upon a showing of **changed circumstances so substantial and continuing as to make the terms unfair.....**

C.R.S. §14-10-122(2): Unless otherwise agreed in writing or expressly provided in the decree, the obligation to pay future maintenance is terminated upon the death of either party or the remarriage of the party receiving maintenance.

II. Case Law:

- a. In re Marriage of Weibel, 965 P.2d 126 (Colo. App. 1998). Wife was receiving \$800 per month in maintenance. Wife was able to live frugally and contribute to her savings every month. Husband filed a *Motion to Modify Maintenance* claiming that the original award was unfair because Wife did not need maintenance. Husband did not argue that he was unable to afford the maintenance. A party seeking modification of an existing maintenance order bears a heavy burden. When determining a motion for modification, the trial court should not consider whether, based on the current circumstances, it would have awarded a different amount of maintenance. The correct inquiry is whether the original award has become unfair. The fact that recipient of maintenance has increased his or her income, does not, by itself, make the original award unconscionable.
- b. In re Marriage of Swing, ___ P.3d ___ (Colo. App. No. 07CA1269, Sept. 4, 2008). Husband decreased his working hours and income as he approached retirement. Trial court reduced his maintenance obligation to reflect Husband's reduced income. A Colorado court should not consider an obligor to be voluntarily underemployed if the decision to reduce income was a good faith decision (meaning not motivated primarily by a desire to reduce maintenance) and was objectively reasonable given the obligor's age, health and practice in the industry. Court must consider the interests of both parties in determining whether the original order has become unfair.
- c. In re Marriage of Folwell, 910 P.2d 91 (Colo. App. 1995). A trial court may retain jurisdiction over maintenance pursuant to C.R.S. §14-10-114 if, at the time of permanent orders, an important future contingency exists which can be resolved in a reasonable time, and, if the court explicitly states its intent to reserve jurisdiction. If there is not an express reservation of jurisdiction, a motion for modification of maintenance must be governed by C.R.S. §14-10-122(1)(a). Jurisdiction can be reserved to modify maintenance under the standards of 14-10-114 to address the future contingency of retirement.

- d. In re Marriage of Caufman, 829 P.2d 501 (Colo. App. 1992). Husband appealed order of the District Court extending his maintenance obligation to wife. The Court of Appeals, held that: (1) trial court may specifically reserve maintenance jurisdiction under general maintenance statute (C.R.S. 14-10-114) in cases in which important contingency exists and is based upon ascertainable future event within reasonable and specific period of time; and (2) if trial court decides to reserve jurisdiction over maintenance it should state its extent to do so on record and briefly outline its reasons for doing so and if it fails to do so, further review of maintenance will be governed by unconscionability standard in C.R.S. 14-10-122.

- e. In re Marriage of Ebel, 116 P.3d 1254 (Colo. App. 2005). C.R.S. 14-10-114(3) does not allow for a post-decree award of maintenance if the court had personal jurisdiction over both parties at the time of the decree and there was not an initial award of maintenance or a reservation of jurisdiction over maintenance.