

Pretrial Motions and Applications

Podcast # 5 of 10

STARK & STARK
ATTORNEYS AT LAW

Although the media loves to cover celebrity or high profile divorce trials, the truth is that only one to two percent of all divorces go to trial and will ultimately be decided by a Judge. The other ninety-eight percent will be resolved by agreement of the parties, as a result of some pretrial procedure or by mediation, arbitration or settled as the trial is about to begin.

Therefore, more attention should be directed to pretrial proceedings and much less to the unlikely eventuality of a trial.

Pretrial applications to the Court are extremely important and useful. We are often asked what can be submitted and determined by the Court on a pretrial application. The easy (and generally very accurate) answer is virtually anything.

Common subjects which are submitted to the Court on pretrial applications are:

- A. A temporary support or alimony arrangement.
- B. A temporary custody or parenting plan arrangement.
- C. The allocation and payment of marital bills and expenses.
- D. An advance of counsel fees or litigation expenses.
- E. The maintenance of insurance coverage.

In addition to this practical scope of pretrial applications, there are a number of applications which your attorney may want to make. For example:

- A. To obtain additional documents or information which your spouse is not voluntarily producing.
- B. To gain access to real estate or a business for the purpose of appraising it.
- C. For the appointment of an independent appraiser.
- D. For the production of medical or hospital records when appropriate and relevant.
- E. For custody or parenting evaluations.

As your case continues, there may be more sophisticated, evidential or technical reasons for pretrial applications. For example, your attorney

Robert J. Durst
Shareholder/Chair
Stark & Stark Divorce Group
993 Lenox Drive
Building Two
Lawrenceville, NJ 08648
609.895.7342
rdurst@stark-stark.com

Robert J. Durst
Shareholder/Chair
Stark & Stark Divorce Group
993 Lenox Drive
Building Two
Lawrenceville, NJ 08648
609.895.7342
rdurst@stark-stark.com

may want to make an application to:

- A. Bar your spouse's testimony or production of evidence on matters for which they have not produced discovery.
- B. To limit or eliminate certain issues such as whether or not pre-owned or inherited assets should be included or excluded from equitable distribution.
- C. To predetermine evidential issues which may be important to either your side or the other side's presentation of the case.

For tactical reasons, your attorney may also want to file a pretrial application to begin to "set the tone" for the case. If your spouse has been uncooperative in discovery and necessitated an unnecessary expenditure of attorney or accountant's fees, your attorney may want to begin to relay that to the Court in support of an ultimate application for an advance of attorney's fees. If, by way of further example, your spouse is interfering with or failing to appear for parenting time, your attorney may want to call that to the attention of the Court because of the impact it will have on the ultimate custody determination.

In summary, more time and effort should be expended by you and your attorney on pretrial matters and much less time on trial strategy or preparation if you are interested in an expedient and successful resolution of your case.



Robert J. Durst II is Chair of the Divorce Group of Stark & Stark and is certified by the New Jersey Supreme Court as a Matrimonial Attorney and by the National Board of Trial Advocacy as a Civil Trial Attorney.

Mr. Durst is a frequent lecturer on Family Law topics, was a Co-Founder of the New Jersey Summer Family Law Institute and is currently the Co Director of the American Trial Lawyers annual Boardwalk Seminar on Family Law. His leading lectures include a nationally known presentation on the distribution of stock options, the use and distribution of life insurance, and an original series on evidence in divorce cases.