

Modification

- GS 50-13.7(a):
 - “an order of a court of this State for custody of a minor child may be modified or vacated at any time, upon motion in the cause and a showing of changed circumstances by either party or anyone interested.”



2-step process



- First: Moving party must show substantial change of circumstances affecting the welfare of the minor child[ren]
- Second: If changed circumstances, trial court must determine that modification is in the best interest of the child[ren]

Establishing Nexus

- Shipman – NC Supreme Court
 - Some effects of circumstances are “self-evident”
- West v. Marko – NC Court Of Appeals
 - Identified factors “naturally affecting” a child’s welfare




Establishing Nexus

- Circumstances where effect is not self-evident include:
 - Cohabitation, relocation, change in sexual orientation, improved finances
- Need “direct” evidence of effect
 - By professionals, parents or testimony of children

Relocation under NC law

- Evidence must show effect of move on child
- Best interest analysis must include review of factors identified in Evans



Evans factors

- The advantages of the relocation in terms of its capacity to improve the life of the child;
- The motives of the custodial parent in seeking the move;
- The likelihood that the custodial parent will comply with visitation orders when he or she is no longer subject to the jurisdiction of the courts of North Carolina;
- The integrity of the noncustodial parent in resisting relocation;
- And the likelihood that a realistic visitation schedule can be arranged which will preserve and foster the parental relationship with the noncustodial parent.
