

**IS AN EVIDENTIARY HEARING REQUIRED
IN ORDER TO DECIDE YOUR MOTION**

You have filed a motion or petition and the judge hears arguments of counsel either in open court or in a pretrial setting. Can the judge then decide the motion, or is an evidentiary hearing required. The answer, not surprisingly, is --- depends.

A review of the cases indicates that an evidentiary hearing is probably not required in at least two circumstances. First, a hearing is not necessary when the court can decide the motion on its face by reviewing its contents. The allegations may simply be insufficient to award the relief sought in the pleading. The case of In Re The Marriage Of Varco, 158 Ill.App.3d 578, 511 N.E.2d 736 (1st Dist. 1987) provides such an example. The movant sought to vacate a prior dissolution judgment because of “threatening and obscene phone calls and threatening notes left on the door of her home”. They came from a third party, not from the other party in the case. The motion was denied without a hearing and the movant appealed claiming that she was entitled to an evidentiary hearing. The appellate court affirmed and pointed out that allegations of duress by a third party, not by the other party to the litigation, were not a sufficient basis as a matter of law to vacate the judgment. Consequently, since the matter could be decided by the content of the pleading, an evidentiary hearing was not required.

Another situation where no hearing is required is when the court has already addressed the issues raised in the motion. In the case of In Re The Marriage Of Chapman, 162 Ill.App.3d 308, 515 N.E.2d 424 (2nd Dist. 1987), the movant appealed the denial of his request for an evidentiary hearing

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and the denial of his motion to vacate a prior dissolution judgment. The appellate court affirmed and noted that the trial judge was already familiar with the matters raised in the motion as they had been previously addressed in other parts of the case. The motion offered nothing new. Therefore, since the court was already familiar with the matters raised in the motion, there was no requirement for an evidentiary hearing.

These cases can be contrasted with In Re The Marriage Of Giammerino, 81 Ill.App.3d 998, 401 N.E.2d 1048 (1st Dist. 1980). Here, the trial court was reversed for failing to hold an evidentiary hearing with respect to a motion to vacate the dissolution judgment. The movant sought to establish the non-marital nature of a piece of property erroneously categorized as marital property in the judgment. The motion was based on new facts outside the record and alleged a misunderstanding between the movant and his prior counsel in connection with an oral property settlement agreement. The trial court heard arguments of counsel, and refused a request for an evidentiary hearing. The motion to vacate was denied. Upon review, the appellate court reversed. It held that an evidentiary hearing was required in order to assess the validity of the factual allegations dealing with matters outside the record.

Also, where there are conflicting facts presented to the judge, either by the papers or otherwise, a hearing is necessary in order to decide the matter. In Re The Marriage Of Lorenzi, 84 Ill.App.3d 427, 405 N.E.2d 507 (3rd Dist. 1980).

One other point. If you want an evidentiary hearing, ask for it. A failure to make a timely request can result in a waiver. Miller vs. Miller, 94 Ill.App.2d 138, 236 N.E.2d 321 (1st Dist. 1968).

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So, if the motion can be decided on its face or by reference to matters already in the record, an evidentiary hearing is not required. On the other hand, in situations where the court must go outside the record or deal with conflicting factual allegations, a hearing is necessary.