

## Call for Justice, LLC—United Way 2-1-1 Training Paper

### Session 7: Introduction to Family Law/Court Self-Help Centers

October 25 and 26, 2012: Debra Swaden, Supervising Attorney Fourth District Court (Hennepin County) Court Self-Help Centers and Mary Dilla, Lead Staff Attorney, Family Court Self-Help Center for Hennepin County District Court.

#### Featured Speakers' Topic

This month, Debra Swaden and Mary Dilla will provide an introduction to Family Law and the Court Self-Help Centers (including the Family Court Self-Help Center in Hennepin County). This will be the first of two sessions on Family Law.

#### Basic Concepts of Family Law

##### What is Family Law?

Family Law encompasses a wide range of legal subjects, all of which center on the relationship between married people who are separating or divorcing and relationships between married and unmarried parents and their children. This area of the law is particularly rife with the legal consequences that flow from those relationships.

##### Paternity

Paternity is a good starting point for understanding family law. Webster's Dictionary defines "paternity" as "the quality or state of being a father." In Minnesota, "paternity" refers to the "legal" father of a child. Once a man is established as the "legal" father of a child, he becomes obligated to financially support the child through age 18 (or possibly through college, depending on various circumstances).

Every child has a biological father, but not every child has a "legal" father. If a child's mother and father are not married to each other at the time of the child's birth, the dad is not recognized as the "legal" father until he or someone else takes steps to establish paternity. That unmarried man has no legal rights or responsibilities relative to the child. This is true even if the mother has named the man as the child's father on the child's birth certificate—a **birth certificate doesn't create a "legal" father.**

There are two ways to establish paternity in Minnesota. One way is where the dad voluntarily assumes paternity. This can be accomplished by filing a "Recognition of Parentage" form with the Minnesota Department of Health. Both the mother and dad sign the form attesting to being the child's biological parents and waiving their rights to genetic testing. If the mother is married to another man, the child is presumed by law to be the husband's child. If the husband

is not the father, he must sign a “Husband’s Non-Paternity Statement” or else the Recognition of Parentage may not be valid.

Alternately, if the mother and dad don’t agree on who is the child’s birth father, either parent can file a court action to establish paternity or fix non-paternity. This usually involves genetic testing of the man and the child and the court then issuing an order finding that the man either is or isn’t the child’s birth father.

**Note: simply establishing paternity for a man not married to the mother doesn’t mean that the man obtains the right to parenting time with the child or the right to make decisions about the child’s wellbeing. Unless the mother agrees to such things, the father must obtain a court order establishing those rights.**

**RED FLAG: Paternity is a minefield for any man since serious legal obligations (and some rights) flow from it. This is the kind of subject matter on which a putative father should obtain legal advice. Make sure to emphasize this with callers.**

## **Family Law Basics**

Whereas paternity is something that attaches to the beginning of a human relationship, divorce attaches to the end of one. Here are some basics now; some of these topics will be covered in more depth with another training session.

Residency: In order to obtain a divorce in Minnesota, one of the spouses must have lived in Minnesota for at least 180 days (6 months) before filing the divorce petition. It can take several months—or even years—before the divorce will be effective/finalized. (A court order [called a “divorce decree”] is required in order for a divorce to be deemed “final.”)

Divorce Without Children: There are two primary categories of divorce—with and without children. When a divorce takes place without children, the process can be much simpler and quicker (and less expensive). Any divorce may be complicated by issues involving joint property (real estate, pensions, jewelry), and this in the end may require a court deciding one or more issues. Still, the absence of child issues tends to make the process far easier.

Divorce With Children: Minor children certainly have the potential to make divorce more cumbersome and expensive. First, there’s the issue of **custody**—where the children will live while the divorce is pending and afterwards. There is also the issue of **child support** both during and after divorce proceedings.

There are two types of custody—“legal custody” and “physical custody.” Legal custody involves the right of a parent to make major decisions about a child, such as his or her health care or counseling, schooling, and religion. The parties may agree (or failing that, the Court may decide) to have legal custody with both parents (joint custody) or only one parent (sole custody).

Physical custody exists with the parent with whom the child(ren) lives. “Joint physical custody” means that the child lives part of the time with one parent and part of the time with the other. It doesn’t necessarily mean that the living time is split evenly between both parents.

Parenting time: also commonly referred to as "visitation," refers to the time the non-custodial parent spends with a child, regardless of the labels used in the custody arrangement. Parenting time is usually set according to a schedule as a result of a court order.

Parenting time is an issue that often involves conflict between the parties. Minnesota law requires the parties to try to resolve their disputes through mediation before bringing the issue back to court. If one of the parties refuses to mediate, if mediation is not appropriate because of domestic violence, or if mediation is not successful, one or both of the parties can ask the court to get involved by filing a Motion for Parenting Time Assistance.

Child Support: In Minnesota (as in many states), child support is determined by a schedule that takes into account the amount of time the child is with each parent, the respective spouse/parents’ income and expenses, the number of children, and other factors. The guidelines can be found at the Department of Human Services website, or <http://childsupportcalculator.dhs.state.mn.us/>.

Spousal Support or Maintenance: Regardless of whether or not minor children are involved, it’s possible that any divorce will involve issues of spousal support or maintenance (sometimes also referred to as “alimony”). Unlike with child support, there are no spousal support guidelines and Minnesota trial courts have broad discretion in deciding whether to award maintenance and in determining its duration and amount. As a result, spousal maintenance can become one of the contested issues in divorce proceedings.

Awards of spousal maintenance may be "**temporary**" or "**rehabilitative**", designed to rehabilitate the spouse so that he/she may become self-supporting, or "**permanent**."

The original decree and spousal maintenance determination may be modified upon a showing that there has been a substantial change in circumstance making the original award (or denial) unreasonable or unfair.

Post-Decree Modifications: Divorces can be like the bad gift that keeps on giving. That fact that a court has entered a divorce decree doesn’t necessarily mean that things are over. Circumstances can change—a child may decide to live with the other parent, or a former spouse may have a financial setback requiring an adjustment to spousal maintenance. All of these developments may require going back to court to “modify” the decree to take into account changed circumstances. This requires filing fees, time, money and tremendous emotional heartache.

## Family Law Filings and the Usual Course

Recall our initial training session and discussion about how a lawsuit starts with a “complaint,” which in turn requires that the defendant respond with an “answer.” Family Law cases follow a similar sequence: the spouse filing for divorce is called the “petitioner” and the spouse answering, the “respondent.” (Note: there is no advantage to being the petitioner or respondent; both are treated as equal parties in the divorce proceedings.) If both spouses agree on how to settle all the issues associated with the divorce, they can sign the same papers and file a “joint petition for dissolution of marriage” to start their divorce.

Because one spouse may need continuing support (especially if children are involved) while the divorce is making its way through the system, a spouse is entitled to file a “Motion for Temporary Relief,” which allows him/her to ask the court to issue a “Temporary Order” for child custody, child support, spousal support and certain property issues. This temporary order expires when the case is finalized either by the parties (through mutual agreement) or by the Court (after a trial or hearing).

Many judicial districts in Minnesota, including the 4<sup>th</sup> and 2<sup>nd</sup> Judicial Districts (Hennepin and Ramsey counties) have moved to an early case management style. In that system, the first appearance or meeting with the judicial officer is called an Initial Case Management Conference (ICMC), where the parties and their attorneys (if represented) are encouraged to focus on resolving and narrowing the contested issues that are barriers to settlement. For example, in Hennepin county Family Court, parties may not file motions for temporary relief *prior* to their ICMC. The goal is to help reduce litigation and its related costs.

The final divorce document is called “Findings of Fact, Conclusions of Law, Order for Judgment and Judgment and Decree.” More commonly, everyone calls it the “divorce decree.” In it, the Court sets out the date the parties married, the names and ages of children born, where the children will live, who will have legal and physical custody of the children, and what child support and spousal support will be paid and by whom. It is a soup-to-nuts type document. Assuming the parties agree on the terms of the divorce (who gets what/where the kids go/child support, etc.), the parties and/or their attorneys will prepare the decree. The Court will then review the decree and sign off on it unless it believes the decree contains something unworkable or contrary to law. If they don’t agree, they will go to trial and the judicial officer will prepare the final divorce decree.

If parents with minor children don’t agree on custody or a parenting time arrangement, Minnesota law requires the parents to attend a certified divorce education program. Children may also be required to go to a class. The divorce class requirements differ from judicial district to judicial district, so this is something that divorcing spouses need to check with their particular court administrator. You can find the agencies that offer these classes on the court’s website at <http://www.mncourts.gov/district/4/?page=647>.

If the divorcing spouses proceed to trial (hearing) on the divorce, it can cost five or even six figures in legal fees and expenses. The parties are then left to the uncertainty of what a judge will do. In Ellie's experience, it is very rare that either spouse is ever completely happy with what a judge awards in a divorce.

By far, the more common course for divorces is where the parties mediate the issues in their divorce and end up agreeing between themselves on how to resolve those issues. The mediation usually involves a private mediator who charges for his/her time. However, this cost is nothing compared to what it costs to go through a trial. Also, while mediation requires compromise by both parties, the advantage is that each party has some control over the outcome. Both parties lose all control when there is a trial.

**RED FLAG: Not that callers often ask for advice on what to do with a divorce, but if they do, always refer them to one or more of the legal resources listed below. It wouldn't even be a good idea to promote mediation over a trial. A party needs to make that decision with the advice of legal counsel or after considering all the factors on their own.**

### **Family Court Self-Help Centers**

Because approximately 70% of all divorces are pro se (that is, where neither party utilizes an attorney), there are Family Court Self-Help Centers in both Hennepin and Ramsey Counties. These centers are in separate physical locations from the civil litigation Self-Help Centers. Additionally, since each courthouse in the state has at least a computer and telephone for calling the centralized Self-Help Center (which is located in 4<sup>th</sup> Judicial District Court Administration offices)(**651-259-3888, 8:30 a.m. to 3:00 p.m., M-F**), anyone in Minnesota can get self-help assistance for their divorce or other family law matter.

There are some commonalities between the Hennepin and Ramsey County Family Court Self-Help Centers. Both are geared toward helping pro se parties navigate their way through Family Law issues; however, neither provides legal advice.

There is a standing order in Hennepin County that requires pro se litigants (people representing themselves) to have all of their motions (except those in the Child support expedited process) reviewed by the Self Help Center before filing. The Self Help Center employees who perform these reviews are called "Family Law Facilitators." The hours of the Self Help Center are 8:00 a.m. to 3:30 p.m. Monday, Tuesday, Thursday, & Friday and 8a – 1:30p on Wednesdays. Review of motions is available by appointment (call **612-596-1067** to schedule an appointment) or by walk-in at 8:00 a.m. Monday – Friday, until full.

In Ramsey County, there are no Facilitators per se, but Family Court Self-Help Center personnel are available to review any document. The hours for document reviews in Ramsey County are more limited (8:00 a.m. to 10:00 a.m. Monday through Thursday unless an appointment is scheduled).

## Legal Resources re: Family Law

### Primary Legal Resources

#### Hennepin County

- 1. Family Court Self-Help Center Legal Advice Clinic. Location: Volunteer Lawyers Network provides this service on the 1<sup>st</sup> floor of the Family Justice Center, 110 4<sup>th</sup> St. S, downtown Minneapolis. Hours: 10:00 a.m.-12:00 noon, Mon. and Thur; 1:00 p.m.-3:00 p.m. Tues. and Fri. Call to confirm that an attorney is scheduled (612-752-6677). Note: Sign-up for the advice clinic starts at 8:00 a.m. at the Family Court Self-Help Center on a first come, first served basis and the number of slots is very limited. **Remind your callers to be patient.** This is a brief advice clinic; the attorney will not provide full representation**
- 2. VLN Free Family Law Phone Advice:** 20 minute telephone advice slots are available to qualified individuals residing or having a case in Hennepin, Scott, or Carver counties. **Scheduling:** Callers need to make appointments in advance by calling the VLN's intake line at **612-752-6677** on M, T, Th and Fri. from 10:00 a.m. to 1:00 p.m. and Wed. from 3:00 p.m. to 6:00 p.m. **Advice slots:** VLN will schedule a 20 minute call with an attorney at some point during a two hour window on Wednesdays and Fridays from 12:00 p.m. to 2:00 p.m. **The callers will need to keep those time windows open in order to receive the call.** **Eligibility:** the caller's household income must be below 300% of the Federal Poverty Guidelines. (Compare to Tubman [see below] where it will provide up to two hours of advice for people at 250% of FPG or below.)
- 3. Mid-Minnesota Legal Aid; Central Minnesota Legal Services (Legal Aid):** Will handle divorces if the client is seeking custody of a minor child; non-married parent cases where the client is seeking custody of a minor child; and child support enforcement. Will also handle family law issues where there is abuse present in the relationship. One centralized intake phone: **612-334-5970. Eligibility:** 125% of FPG (refer if the caller is close to this FPG). **Always provide a fallback referral (which in the case of Family Law is the Court Self-Help Center).** (Remember, the Court Self-Help Centers cannot provide legal advice—instead, they explain and assist with completing forms and explain how to navigate the legal system.)
- 4. Hennepin County Bar Association Family Law Low Fee Project: (612-752-6666)** where there is no service fee for the initial visit. This service does screen for income, and it serves Hennepin, Ramsey, Anoka and Dakota County residents between 125-250% of the Poverty Guidelines. The project is designed to help the “working poor,” and it

requires that the client pay a \$500 retainer. After that, the attorney charges \$55/hr. The client must have verifiable income.

- 5. Cooper & Reid: (612-568-4529)**(825 Nicollet Mall, Suite 950, Minneapolis) provides both full representation and brief advice on family law issues and social security disability claims. The foundation of their firm is a **sliding-scale fee model** which allows clients of modest means affordable legal representation. Callers can call to obtain a sliding scale fee rate quote. **Note: probably not in the 2-1-1 database because the firm is profit-oriented. Refer callers to the Call for Justice website and “Alternative 2-1-1 Referrals” button.**
- 6. Father’s Project:** This is a service that focuses on the legal rights and responsibilities of fathers. It is provided by Central Minnesota Legal Services (Legal Aid). See contact information, above.

### Ramsey County

- 1. Ramsey County Family Court Pro Se Clinic:** Volunteer attorneys assist people who represent themselves in Family Court. The attorneys will offer advice on most Family Law issues. **Location:** Family Court Self-Help Service Center, Juvenile and Family Justice Center, 25 West 7<sup>th</sup> Street, St. Paul. **Time:** M, W, and Thur, half hour appointments start at 12:00 p.m. **Callers are seen by appointment, although possibly they take walk-ins.** Have callers call **651-266-5125**. **Eligibility:** **there are no income restrictions to use this service.**
- 2. Ramsey County Bar Association Attorney Referral Modest Fee Service: (651-224-1775)** (email: [ars@ramseybar.org](mailto:ars@ramseybar.org)) private attorneys who provide low bono services. This serves Ramsey County residents between 125-250% of the Poverty Guidelines; the caller pays a \$20 referral fee. The client must pay up to \$600 for a retainer; after that the attorney charges \$55/hr. Participating attorneys cover Family Law, Consumer Issues, Immigration, and Real Estate Foreclosure
- 3. Southern Minnesota Regional Legal Services (SMRLS)(651-222-4731).** As of the time this training paper was authored, we awaited information as to specifics about SMRLS’s Family Law representation eligibility requirements (we assume it is 125%). We will update at the training sessions if we obtain more information.

### Twin Cities Generally

- 1. Tubman: (612-871-2400)** Volunteer attorneys provide free legal representation to low income individuals with family law cases in Hennepin, Washington and Ramsey Counties. **Eligibility: 125% of FPG** or below. **Note:** also operates self-represented legal clinics for individuals who represent themselves in family law cases. Volunteer

attorneys meet one-on-one for two hours with clients to draft court documents, provide legal advice and help clients prepare for mediation, court conferences or court hearings. **Eligibility: 250% of FPG** or below.

2. **Dakota County Law Library:** A family law clinic occurs six times a month. **Contact:** Mary Ellen Gallagher, Dakota County Law Library, 14955 Galaxie Avenue, Apple Valley (952-891-7135). Eligibility: Participants must be either be a Dakota County resident or to have a Dakota County family law case filing.
3. **Anoka County:** Central Minnesota Legal Services will handle Family Law cases in Anoka County—lawyers from CMLS in Minneapolis travel to Anoka to handle the cases. The caller can call Anoka County Judicare (763-783-4970) or CMLS (612-334-5970).
4. **Cornerstone Divorce Preparation Classes:** Cornerstone in Bloomington offers a **New Direction** series of classes on preparing for divorce, navigating child custody and parenting time, “dollars and sense of divorce,” and safety. The sessions are free of charge and people may attend one or all of the classes. The next series starts in January, 2013. Callers should contact Amy at 952-884-0376 by the Friday before each Monday session they want to attend.
5. **MN Courts Self-Help Center** is a virtual Self-Help Center available by phone (651-259-3888) and email through the Minnesota Judicial Branch website: [www.mncourts.gov/selfhelp](http://www.mncourts.gov/selfhelp)

#### Fallback Referrals

1. Hennepin County—Family Court Self-Help Center.
2. LawHelpMN.org

Let us know if you have questions. Thanks!

Call for Justice, LLC