

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

Session 8: Sticky Family Law Issues

January 17 and 18, 2013: Melissa Houghtaling of Heltzer & Houghtaling, St. Paul

Featured Speaker's Topic

This month, as a continuation from our training in October, Attorney Melissa Houghtaling will discuss sticky, or difficult, family law Issues.

Sticky Family Law Issues

This month we delve deeper into some of the stickier family law issues, to compliment the introduction to family law that we provided in October.

It's important to step back and remember what divorce actually is: the “legal ending” to what had a “legal beginning” (marriage). Since marriage is something for which the State grants a license—and thus, is a “legal relationship” with real benefits and obligations—there needs to be a formal legal process to properly end that legal relationship. The conclusion of that formal legal process is called a “decree” or court order for dissolution of marriage.

In other words, a divorce is the “legal ending” to the “legal relationship” of marriage. Without a divorce, certainly you cannot ensure for the proper resolution of certain obligations or rights (like child support or the ability to be free of debts made by your spouse) that arose through marriage.

RED FLAG: The one defining characteristic of family law is that above all else, it's a legal area fraught with emotion—that of the parties and the attorneys. For those going through a divorce or child custody dispute—including 2-1-1 callers—emotions often run at boiling points. For the attorneys, the challenge is controlling the emotions of clients—so that the clients will make rational, non-emotional decisions. Many a dollar has been spent, and many a headache had, because of family law emotions.

1. Legal Separation Issues—Still the Same Headaches!

In Minnesota, legal separation is not a required prerequisite to obtaining a divorce. In fact, many divorcing couples continue to live in the marriage household—though in separate bedrooms.

For those couples contemplating divorce, “legal separation” is actually a court-filing process which can cover the same issues as a divorce (child custody, child support, spousal support [alimony]). Thus, filing for “legal separation” is not actually a way to “make things simpler” in terms of divorce.

Many couples informally separate prior to any divorce court filings, where one spouse simply moves out. For couples without children, this works extremely well. For couples with children, moving out can work too, assuming the couple agrees on how to handle child parenting time or the cost of supporting the children. In a perfect world, those kinds of agreements form the basis for an eventual divorce (the Court and most divorce lawyers would always prefer for the divorcing parties to work out the issues between themselves).

The problem with an informal separation is that there is no quick way to get the Court's help to control the behavior of the other spouse. Financial affairs are a good example: with an informal separation, one spouse can continue to spend marital assets or rack up debts that the other spouse may be equally responsible for.

On the other hand, for some people, a separation (either informal or formal through the court) can give a spouse thinking time to determine if, in fact, a divorce is what they want. Additionally, some people believe that a separation is better for religious reasons.

In short, how you start out—with a separation versus filing an actual divorce proceeding—may in the end not make much of a difference. The reality is that in order for there to be a “legal ending” of marital rights and obligations, you need to have an actual divorce decree.

2. The Process of Getting Divorced, Briefly Stated

In its most basic sense, a divorce is simply a very specialized lawsuit. For our purposes we will focus on Hennepin County (where Zoey Zalopa resides), but for the most part, the process is fairly similar across Minnesota (with some notable exceptions which we don't have space to cover).

Every divorce follows basically the same pattern:

1. In Minnesota, a divorce is commenced upon serving the opposing party with a Summons and Petition for Dissolution of Marriage. Immediate filing with the Court is optional and often a petitioner will wait to file until service has been accomplished and attorneys have had an opportunity to communicate.
2. To properly serve the responding party, the petitioner must personally serve the documents using a process server or other third party OR use an alternate means of service using a document called “Acceptance of Service” wherein the respondent is not admitting or denying any of the allegations in the Petition but merely confirming receipt of the documents.
3. There are variations of the petition (with or without children; an agreed-upon divorce called a “joint petition”), but generally it follows the same process as when Zoey was sued by Donatello Turtle early in our training.

4. The other spouse files an answer to the petition for dissolution. If attorneys are involved, frequently a respondent will not file an answer but rather will get an indefinite extension on the time to answer if it is necessary in the future.
5. Within 4 weeks, an Initial Case Management Conference (ICMC) takes place. This is where a judicial officer (specialized in family law issues) discusses where the parties are in terms of resolved and unresolved issues and explains the options going forward for alternative dispute resolution. If the parties are in agreement on temporary concerns regarding child support, parenting time (visitation), custody and spousal support the Court MAY order temporary relief. The court WILL NOT hear any contested matters or motions at the ICMC.
6. One possible option for alternative dispute resolution is called an Early Neutral Evaluation (ENE). There are two types of ENE: SENE, or Social Early Neutral Evaluation, involves resolution of custody and parenting time issues by two evaluators who will examine the facts of the case and then provide their opinions about how they believe a Court would rule if the divorce went to trial or hearing. The second, a FENE, or Financial Early Neutral Evaluation, involves one evaluator, typically an attorney with significant financial experience, who examines the marital assets and debts and provides an opinion related to resolution of financial matters. The ENE process is confidential and the only information the evaluators provide to the court is a yes or no on whether resolution was reached. If an agreement is reached, the parties will draft a Stipulated Agreement reflecting the resolution and submit the document to the Court for approval. The parties do not have to reach an agreement at the ENE and sometimes parties will agree after the ENE session.
7. If the ENE doesn't produce a settlement, the two spouses can engage in "discovery," which could include taking depositions (sworn statements under oath). Usually this will happen only if one or both of the spouses is represented by an attorney. The discovery process may also involve the exchange of documents like tax returns or bank statements. In Minnesota, family law discovery tends to be more informal than formal and involves voluntary exchanges of documents necessary to resolve disputes in the divorce proceeding.
8. Throughout the process of discovery, the parties can decide to settle. The parties can hire an independent mediator or they can negotiate between themselves. If that occurs, they will enter into a written "stipulation" where they lay out all of the important details (who pays what; who is entitled to what, etc.) of the divorce.
9. If the parties can't settle their divorce issues amicably, the case will proceed to hearing where a judge will listen to testimony from the divorcing spouses and consider written evidence. The judge will then make a decision and enter his/her findings in a "ruling" or court order. Most of the time, neither spouse gets all they want from the judge.

RED FLAG: Bear in mind that the vast majority of divorces are resolved through negotiations and settlement. This is a good thing, too. In this way, the parties keep some measure of control over the outcome. Given the emotions at stake, having some control is a very good thing. While we

know you won't give advice about how a caller should resolve a family law issue, it's good to know that almost always, the divorce gets accomplished through agreement.

3. Child Support—A Slightly More In-depth Look

In general, the amount of child support that one spouse owes is dependent on many factors— income of the two spouses; the number of children; expenses; and parenting time (visitation by the spouse who doesn't live with the children). As a reminder, child support is potentially payable by any legal parent regardless of the marital status of the parties.

We've run the numbers on Zoey Zalopa's situation; see the attached child support guidelines worksheet. Under the guidelines, Herman owes \$269 in monthly child support.

As you can see, the worksheet takes into account the income of both parents. While it calculates some of the expenses of running a family, it doesn't calculate all of them. There are a number of ways to tweak these figures, and this usually becomes one of the stickier issues in a divorce, as well as a big negotiating point.

RED FLAG: We're providing the worksheet as a way of better understanding the process. By no means should our simple calculations be relied upon. They are solely for illustration purposes.

4. Parenting Time (Visitation)

In the case of separations or divorces, it's in everybody's best interests to have parents interact with their children. Traditionally, this has been called "visitation," which has been replaced with "parenting time" as a more appropriate term. Again, much like child support, a legal parent can petition for custody or parenting regardless of the marital status of the parents.

Optimally, the separated parents will agree on parenting time, taking into account the desires of the child. At a younger age (such as younger than thirteen), the child won't have as much say in how parenting time is used as when they're older. Older children sometimes decide they want to spend more or less time with one parent. In those instances, Courts are hard-pressed to order (and then enforce) that a seventeen-year-old spend more time with the non-custodial parent.

The Court will simply specify that each parent is to have "reasonable parenting time" if the parties have demonstrated the ability to cooperate and get along and the parties agree to such an arrangement. The Court will never independently order such flexibility without agreement of the parties. If the two divorcing parents can't agree on a schedule, the Court will set specific dates and times for parenting time. Otherwise, the parents can agree to use a "Parenting Plan," where they work on writing a plan that states the time each parent will spend with the child and how they're going to make decisions about the child.

When the Court is determining a schedule and custody labels, the judge must consider thirteen (13) factors relative to the best interests of the child. Given that the overriding principle is to do what's in the child's best interest (this isn't the first time you've heard about the protecting the child's best interests being key to any family law issue), sometimes it's necessary that someone monitor or "supervise" a parent's visitation with his or her child. The Court can also put conditions on parenting time, such as making the noncustodial parent be sober for a certain time period before and during parenting time.

There's also a resource known as a parenting time "expediter," who can get involved if there's a dispute over parenting time. An expediter will hear out both parents over the dispute and then make a decision. A parenting time expediter is appointed by the judge and must be identified in any order regarding custody. A parenting consultant is an individual appointed by the court but is appointed by agreement of the parties and has a broader range of decision-making abilities. A parenting time expediter can ONLY make decisions regarding parenting time disputes. A judge may or may not accept the expediter's decision.

Generally, a parent can't deny the other parent time with their child/children. There is one exception to this where one parent believes the other parent poses an immediate danger to the child/children.

5. Interstate Child Support and Custody—Now Things Get Really Complicated

We know that 2-1-1 receives a fair number of calls relating to child custody where one parent lives outside Minnesota. Sometimes the child is also outside the state; at other times the child resides in Minnesota with one parent. In those instances, an out-of-state parent may seek to either change or modify that arrangement.

Many states, including Minnesota, are signatories to the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA). Among other provisions, the UCCJEA requires courts to enforce valid child-custody orders/determinations made by a court in another state. There are some precise procedural requirements that aren't easy to understand. Suffice it to say that the child must have some connection to Minnesota—that the child now lives here, or that the child lived in Minnesota at one time and there is no other state that could assert home state jurisdiction.

Other issues with parents living in different states or parts of one state: Who pays for the child's travel expenses? Must a parent agree to let a child move 200 miles away within the same state? These issues usually can be resolved by agreement, or if necessary, filing a court action to modify the custodial/visitation arrangement.

Finally, a custodial parent can't simply decide to move out of state with the child/children. They have to get written permission from the noncustodial parent. If the custodial parent leaves with

the children without permission, it's a crime and they can be arrested and lose custody. If there is a disagreement about the custodial parent moving, the Court will decide the issue. Either parent may move out of state without the children without the express permission of the court or other parent.

RED FLAG: Dealing with interstate child custody issues isn't easy. Many attorneys lack the expertise and won't take such cases. Hence, it is important for callers to understand this is a very specialized legal area that may take multiple attempts (phone calls, networking, etc.) before they can locate a suitable attorney.

Legal Resources re: interstate issues: An important thing to remember is that Legal Aid actually exists in every state. Thus, assuming someone is income eligible and accepted by Legal Aid in, say Wisconsin, the Wisconsin Legal Aid office would then refer the case to Minnesota Legal Aid. If you get a call from someone out of state, explain that they have this resource.

A private firm with a public-service bend that works on interstate cases is:

Walling, Berg & Debele, P.A.

121 South 8th Street, Suite 1100

Minneapolis MN 55402

Phone: 612-326-3453

Fax: 612-340-1154

Toll Free: 1-888-340-9311

We will add the Walling firm to the Call for Justice website under "Alternative 2-1-1 Referrals." **Likewise, we will add Melissa Houghtaling's firm, Heltzer & Houghtaling, to the website.**

6. Grandparent Visitation

Recall our training on elder law and how the subject of grandparent rights was discussed briefly. Minnesota law provides that in many instances, a grandparent can petition the court for visitation rights with a grandchild. The Court may grant visitation if it finds that visitation would be in the child's best interests and wouldn't interfere with the underlying parent-child relationship.

It's possible for a grandparent to "piggyback" on an adult child's divorce proceeding as a way of petitioning the court for the right to visit the children (e.g. grandchildren) of the marriage. If the Court decides that grandparent visitation is not appropriate, the grandparent may not re-petition the court again until six months have elapsed from the date of the Court's order.

Legal Resource: Grandparent visitation is also a somewhat specialized area of the law. The **Cooper & Reid firm** (also listed under "Alternative 2-1-1 Referrals" on our website), does low bono work representing grandparents.

Minnesota Kinship Caregivers Association provides programs and services to grandparents and other third parties seeking to formalize their relationship with a child that is not legally theirs.

Minnesota Kinship Caregivers Association
PO Box 6758 - Minneapolis, MN 55406-0758
877-917-4640 toll free or 651-917-4640

"Please know that return calls could take up to 2 - 3 Business Days."

The MKCA advertises a "warm line" (as opposed to a "hotline"), so the caller should be advised to be patient. Their website specifies that they have a "Legal Steps Manual," which is free to caregivers or potential caregivers. **We have not seen this manual, and thus cannot vouch for it. However, it may be a good resource (stress the word "may" to callers since Call for Justice hasn't reviewed the manual).**

7. Qualified Domestic Relations Orders (QDROs)

Above we discussed how divorce is a way of recognizing a "legal ending" to a marriage. The "legal ending" comes in the form of a court order (also known as a "decree"). Besides being the government's formal document recognizing that a marriage no longer exists (and thus the "legal relationship" of marriage has ended), the divorce decree is important because it gives public notice that two people no longer have a legally-binding relationship.

This brings us to Qualified Domestic Relations Orders (QDROs). A QDRO is a subcategory of court orders that relate to the "legal ending" of a marriage. Specifically, a QDRO deals with funds from retirement plans. A QDRO is used to assign these funds from one spouse with a retirement plan to the other (divorced) spouse who either doesn't have a plan or who is entitled to an equitable share of the one spouse's plan. Once a QDRO is effective, the other spouse owns the retirement plan or funds in an amount that has either been agreed upon or which the Court decided.

Because pensions and retirement moneys (such as IRAs) are also governed by federal law, QDROs can get complicated. Still, they are an essential part of any divorce where retirement moneys are distributed between the spouses. Thus, they are the kind of thing about which to consult both an attorney and a tax advisor.

8. Loose Ends

One of the things that sometimes happen with divorces is that certain loose ends don't get resolved or tied up. For example, sometimes a party fails to record entry of the decree with the County Recorder, meaning that there's no formal record of one spouse giving the house to the

other spouse as part of the divorce. Or, more commonly, there are credit card issues where Visa or MasterCard continue to count both spouses on the account.

Tying up loose ends isn't easy. For people who are divorcing, it's important to keep a checklist of items to be addressed by the divorce and to understand that some of those items don't get taken care of until after the divorce decree has been entered by the Court.

Other Legal Resources re: Family Law (identified in our last training)

Primary Legal Resources

Hennepin County

- 1. Family Court Self-Help Center Legal Advice Clinic. Location:** 1st floor of the Family Justice Center, 110 4th 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 a.m. -1 p.m. and Wed. from 3-6 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 12-2 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 is at 125%, but refer anyway if the caller is close. **Always provide a fallback referral (which in the case of Family Law is the Court Self-Help Center).**
- 4. Hennepin County Bar Association Low Fee Family Law Project:** (612-752-6666) 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 the 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.**

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 7th Street, St. Paul. **Time:** M, W, and Thur, half hour appointments start at 12:00 noon. **Callers are seen by appointment, although possibly they take walk-ins.** Have callers call 651-266-5125.
Eligibility: there are no restrictions on income to use this service.
2. **Ramsey County Bar Association Attorney Referral Modest Fee Service: (651-224-1775)** (email: 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. **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). Requires participants to 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.

Fallback Referrals

1. **Hennepin County—Family Court Self-Help Center:** Virtual Self-Help Center available by phone (**651-259-3888**) and email through the Minnesota Judicial Branch website: www.mncourts.gov/selfhelp

Let us know if you have questions. Thanks!

Call for Justice, LLC