



**Legal Aid**  
OF NEBRASKA

HEALTH EDUCATION & LAW PROVIDER  
\*H.E.L.P.\*

## Family Law and Health Care

## Family Law and Health Care

Family law solutions reduce exposure to violence and create a safe and healthy community

- Divorce**
  - Impact living situations and decision-making processes related to health
- Custody**
  - Children need a parent(s) to make decisions and secure their health at home
- Protection Orders**
  - Protects patient's health and safety

## Family Law and Health Care

- ▶ Less violence at home means less need for costly emergency health care services.
- ▶ Stable family relationships significantly reduce stress and allow for better decision-making, including decisions related to health care



## Family Law: Divorce

- ▶ Nebraska has a "no fault" divorce law. This means that the divorce case will not involve proving what either spouse did to end the marriage. The Court wants to focus on the future: how will the parties care for children, how should the property and debt be fairly divided?
- ▶ To be able to file for divorce in Nebraska, must be a resident for at least 1 year prior to filing
- ▶ Divorce and health concerns overlap in many circumstances:
  - ▶ Domestic violence situations
  - ▶ Estranged spouses with medical debt
  - ▶ Substance abuse situations
  - ▶ Child Protective Services
  - ▶ Medicaid!



## Family Law: How are benefits effected by Divorce?

- ▶ If a spouse is no longer in the home, but the parties are still married, both of the parties income will need to be reported when applying for benefits (SNAP, ADC, ect.)
- ▶ A filed complaint is sufficient to assist the party in applying for benefits without the other parties information.
- ▶ Child support is also included as income. This is tricky with Social Security Benefits for a child.
  - ▶ When the payee parent pays inconsistently, this may cause an overpayment for SSI.

## Family Law: Divorce

- ▶ What happens when a party is unhappy or wants to change their divorce decree?
- ▶ A modification of the divorce decree needs to be filed.
  - ▶ The person requesting the modification must prove that there has been a material change in circumstances which occurred after the original decree or previous modification was entered and which was not considered when the prior order was entered.
  - ▶ The best interest of the children are also considered.

## Client Stories: Divorce

"Janelle" was referred to HELP by her therapist.

Janelle had been in an abusive relationship, her husband struggles with alcoholism and has resisted getting divorced in the past.

HELP is currently assisting Janelle file for divorce and protect herself from her husband's abuse and debt.

## Family Law: Custody Definitions

- ▶ Custody is critical to the health decision-making process.
- ▶ Legal Custody: The authority or right to make major decisions about a child's well-being, i.e.:
  - ▶ What medical treatment a child will receive,
  - ▶ Where a child will go to school,
  - ▶ What religion, if any, the child will learn.
  - ▶ May be joint custody
    - ▶ One parent (usually with physical custody) will be awarded final decision-making authority
  - ▶ Joint custody significance:
    - ▶ A parent cannot be cut out of decision-making process
- ▶ Physical Custody: The party that physically has the child
  - ▶ May be joint custody
  - ▶ Joint custody significance:
    - ▶ Child moves from one home to another for a specified period of time, such as alternative weeks

## Family Law: Custody

- ▶ In Nebraska, any child born to the marriage is presumed to be the husband's child. Until genetic testing is completed.
- ▶ If the parents are **not** married, the Mother of the child is **NOT** required to list the Father on the birth certificate.
- ▶ If there is not a Father listed on the birth certificate, what does that mean?
  - ▶ In Nebraska, if there is not a father listed on the birth certificate, the father does not have any rights to the child until paternity is established by the court.

## Family Law: Custody

- ▶ So what happens when there is not a custody order?
  - ▶ No visits or communication are required
  - ▶ The parent who has the child can keep the child, until there is a court order establishing a parenting plan.
  - ▶ **BE CAREFUL:** If there is not a court order establishing a parenting plan or custody arrangement, if a parent allows the other parent to have a visit, **THAT PARENT IS NOT REQUIRED TO RETURN THE MINOR CHILD(REN).**

## Client Stories: Custody

"Maci" was referred to HELP by her social worker.

Maci suffered from a stroke and had a minor child with Autism. Maci was only receiving SSDI and raising the minor child on her own.

HELP is assisting Maci with getting full legal and physical custody of the minor child and was awarded child support and back support.

## Family Law: Child Support and Paternity

- ▶ When the parents of a child are not married, and the child is receiving some type of state benefit (Medicaid, ADC, SNAP, ect.) the State of Nebraska can initiate an action to establish paternity and child support.
- ▶ Whoever the child is physically living with, will be the payee of the child support.
- ▶ When the state initiates the court action, they **ONLY ESTABLISH PATERNITY AND CHILD SUPPORT.** Custody is not determined.
  - ▶ One of the parents will have to file for custody separately in this case.

## Family Law: Child Support

- ▶ Child support will be ordered based on each parent's net income and the Nebraska child support guidelines.
- ▶ Child support can have a different calculation depending on what type of custody is ordered. (Joint vs. Full)
- ▶ Childcare expenses are not specifically computed into the guidelines amount and are to be considered independently of any amount computed by use of these guidelines. Care expenses for the child for whom the support is being set, which are due to employment of either parent or to allow the parent to obtain training or education necessary to obtain a job or enhance earning potential. (Day Care) Court Rule § 4-214.
- ▶ Just because one is not working right now, doesn't mean that there won't be any child support ordered.

## Child Support Modification

- ▶ To modify a child support order, there must be a You must have a legal reason that is called a "material change in circumstances."
- ▶ This change must be something that happened after the court last ordered child support. Some legal reasons to change a child support are a lost job, a lower or higher paying job, or being disabled.
- ▶ You "can not" get your child support changed if the legal reason for the change happened less than three months ago.
- ▶ You "can not" get your child support changed if the legal reason for the change will not last at least six months.
- ▶ You "can not" get your child support changed because you or adverse have more children.
- ▶ You "can not" get your child support changed if your legal reason will only change the child support a little.

## Client Stories: Custody



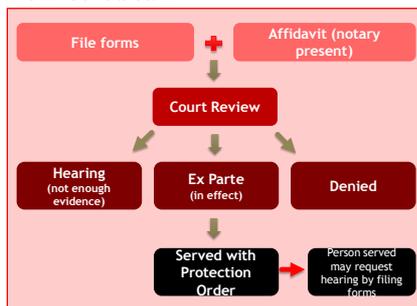
## Protection Orders

Two types of protection orders authorized by statute:

- ▶ Domestic abuse protection orders; can only be filed against a household member; domestic abuse is defined as
  - ▶ Attempting to cause or intentionally and knowingly cause bodily injury
  - ▶ Placing, by credible threat, another person in fear of bodily injury
  - ▶ Engaging in sexual contact without consent
- ▶ Neb. Rev. Stat. § 42-903(1)
- ▶ Harassment protection orders
  - ▶ Harassment means engaging in a knowing and willful course of conduct directed at a specific person which seriously terrifies, threatens, or intimidates the person and which serves no legitimate purpose
- ▶ Neb. Rev. Stat. § 28-311.02(2)(a)

## Protection Orders

How to obtain



## Protection Orders and Health Care

- ▶ Protects person from abuser
  - ▶ Usually abuser not allowed to go to person's home, kid's school/preschool/daycare
- ▶ Hospital can prevent abuser from entering
  - ▶ If abuser refuses, call police
- ▶ If the person believes abuser is following or is at same location, call police
- ▶ Court may order custody up to 90 days



## Client Stories: Custody

"Amber" was referred to HELP by her social worker after a hearing was requested.

Amber had escaped the abusive home with her new baby and needed representation at the hearing

HELP represented Amber at the hearing and was able to get the protection order affirmed for a year.

## How to Help Parents with terminal illnesses

- ▶ When a parent has been diagnosed with a terminal illness or has a poor prognosis, what happens to their children?
- ▶ A Parent has two choices:
  - ▶ Complete a Last Will and Testament and can also complete a Temporary Delegation of Parental Powers (TDOPP)
    - ▶ The parent can name someone to become guardian in a Last Will. A TDOPP will allow someone to make decisions on behalf of the child(ren) for a period of 6 months or until revoked
  - ▶ Guardianship. We can assist with a grandparent with a guardianship over the minor child(ren).
  - ▶ Problems? The other parent.

## Grandparent Rights

- ▶ A grandparent can seek visitation if:
  - ▶ 1-The parent or parents are deceased
  - ▶ 2-The marriage of the parents has been dissolved or is in the process of being dissolved
  - ▶ 3-The parents have never been married but paternity has been legally established
- ▶ In determining whether a grandparent will be granted visitation, evidence must show that a significant beneficial relationship exists or has existed in the past between the grandparent and the child and that it is in the best interests of the child for the relationship to continue and that the grandparent visitation will not adversely interfere with the parent-child relationship. Nebraska Revised Statute 43-1802
- ▶ The general GP visitation is one weekend a month.

## Client Stories: Custody

"Debra" was referred to HELP by her social worker after her daughter, "Farrah" was diagnosed with Ovarian Cancer

"Derek" the child's father, filed for custody and Farrah passed shortly after.

HELP represented Debra to establish a grandparent visitation schedule.

QUESTIONS?

  
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